# Under the Eye of Providence: Surveilling Religious Expression in the United States

Kathryn A. Montalbano

Submitted in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy
under the Executive Committee
of the Graduate School of Arts and Sciences

COLUMBIA UNIVERSITY

2016

ABSTRACT

Under the Eye of Providence: Surveilling Religious Expression in the United States

Kathryn A. Montalbano

This dissertation analyzes how government agencies influenced the religious expression of Mormons of the Territory of Utah in the 1870s and 1880s, Quakers of the American Friends Service Committee (AFSC) from the late 1940s to the early 1960s, and Muslims of Brooklyn, New York, from 2002 to 2013. I argue that nineteenth-century federal marshals and judges in the Territory of Utah, mid-twentieth century FBI agents throughout the United States, and New York Police Department officers in post-September 11 New York were prompted to monitor each religious community by their concerns about polygamy, communism, and terrorism, respectively. The government agencies did not just observe the communities, but they probed precisely what constituted religion itself.

Table of Contents

**Acknowledgements**

I would first and foremost like to thank the faculty and students of the Columbia Communications PhD program for providing me with a home in New York. The program offered the ideal balance of rigor and support within a collaborative, intellectual environment. We are fortunate to be part of a community of scholars who seek to build bridges rather than walls.

Few scholars I have encountered so far in my academic career are quite like my advisor, Richard R. John. Since I began my graduate studies, I have admired Richard for many reasons, not the least his insatiable appetite for knowledge, his unrelenting dedication to scholarship, and his keen intuition for recognizing the value in topics that might otherwise be dismissed. Richard also possesses the distinctive ability of connecting a wide range of ideas and scholarship in a way that illuminates the vast and extensive field that is communications. Beyond all of these qualities, I have always admired Richard for his commitment to the development of his students and the well-being of his family, despite the extensive time necessarily allotted to his own research. I hope to follow this model as I start my own path as a professor.

Courtney Bender, whom I consider my primary mentor outside of my own field, has been invaluable in my scholarly training. She has on more than one occasion prevented me from going down a path that was destined for a dead end. In her brilliance, perceptiveness, and precision, she has never ceased to stun me with her sharp intellect and thorough comprehensiveness in both her feedback and in her own scholarship. I am lucky to have found an academic role model such as Courtney.

I would like to thank the three other main faculty members of our program: Andie Tucher, for her tireless devotion to our program, her beautiful gift of prose, and her constructive

comments on the visual component of surveillance; Todd Gitlin, whose ability to make interdisciplinary connections among seemingly disparate ideas guides his broad vision as the chair of our program; and Michael Schudson, whose comments and feedback are among the most thoughtful and deliberate among any of the faculty at Columbia. Thank you also to David Stark and Elizabeth Blackmar of my dissertation committee for offering their unique sociological and historical perspectives. Conversations with each of them early on in the dissertation process were exceedingly beneficial to shaping and forming my research agenda.

Many intellectuals and scholars not yet mentioned have influenced my journey through academia. This list includes Randall Balmer, Casey Blake, Euan Cameron, James Carey, Samuel Cruz, E. Valentin Daniel, Sheila Greeve Davaney, Gary Dorrien, Stewart Hoover, Juraj Kittler, Brian Larkin, Lawrence Lessig, Kathryn Lofton, Frank Moretti, Brigitte Nacos, Ann Neumann, John Durham Peters, Frederick A. O. Schwarz, Jr., Neslihan Şenocak, Jack Snyder, Jacob Soll, Paul Starr, Charles Taylor, Stefaan G. Verhulst, and Jonathan Zittrain, to name a few.

Doctoral candidates would encounter a far more formidable task were it not for the critical guidance of librarians and archivists. I would first like to thank Donald Davis, Archivist at the American Friends Service Committee, for his genuine eagerness to assist with my research and his overall warm welcome, including a gift of the most delicious blood orange from Reading Terminal Market. I would also like to thank two members of the library staff at Swarthmore College: Wendy Chmielewski, Curator of the Swarthmore Peace Collection, and Christopher Densmore, Curator of the Friends Historical Society, for helping me to narrow down my research and hone in on the AFSC. I would additionally like to thank Jim Babcock, Library Specialist at Columbia University; Carl Hallberg, Reference Archivist at the Wyoming State Archives; Mark

Shelstad, Deputy State Archivist at the Wyoming State Archives; and Cody White, Archivist of the National Archives at Denver, for their assistance with my Mormon research. Thank you to the law librarians at Columbia Law School for their assistance with my Muslim research. And finally, thank you to John Tofanelli, Research Collections and Services Librarian at Columbia University; Mary Cargill, reference librarian at Columbia University; and Starr Hoffman, librarian at the Columbia Journalism School, for their indispensable assistance with the very early stages of this research.

Doctoral candidates would not exist without the professors who initially inspired them to pursue graduate school. I owe my deepest gratitude to the brilliant professors of the English department at Haverford College, in particular: Rajeswari Mohan, whose upper-level class which I ambitiously attempted as a sophomore, "Textual Politics: Marxism, Feminism, and the Deconstruction," jolted me into a world in which not only texts, but the world around me, was no longer easily comprehensible; Laura McGrane, whose gift of facilitating discussions and insightfully directing students to their better writerly selves was unmatched; Kimberly Benston, whose oral brilliance shone in diverse courses on Shakespeare and the intersection of human and animal nature, and whose mastery of writing was so evident that his students saved his email correspondence; Maud McInerney, whose passion for medieval literature helped me to push my own communications scholarship backward in time; Gustavus Stadler, whose seminar on American literature provided me with early insight into the significant impact of pragmatism on communication studies; and Debora Sherman, whose guidance of my senior research on modern Irish literature sparked my venture into communications as I sought to explore the impact of mass media on reconciliation in post-conflict Northern Ireland. I would also like to thank John

Muse, whose scholarship pushed me to think beyond interdisciplinary boundaries. I extend a special thanks to Mark Gould of the sociology department, with whom I clashed during the first week of freshman year, but who quickly became one of my most valuable advisors. Mark ultimately encouraged me, a starry-eyed undergraduate infatuated with the pursuit of knowledge, to consider the field of communications. And finally, a heartfelt thank you to Henrik Eger, whose engagement with both English literature and communication facilitated my transition to doctoral work immediately after college.

Thank you to my colleagues and friends, in particular Burcu Baykurt, Jonah Bossewitch, Diani Citra, Travis Mushett, Ri Pierce-Grove, and Soomin Seo for providing me with feedback at various stages of this process. Soomin and Travis, thank you for being an indispensable source of inspiration and friendship throughout this entire process. Many other friends and colleagues provided endless encouragement and support, including Colin Agur, C. W. Anderson, Lynn Berger, Charles Berret, Amanda Lynn Bradshaw, Katherine Brown, Andi Dixon, Rosalind Donald, Katherine Fink, Maxwell Foxman, Alexandre Gonçalves, Hibah Hussain, Efrat Nechushtai, David Noell, Ruth Palmer, Ben Peters, Annie Rudd, Julia Sonnevend, Philip Stephenson, Madiha Tahir, and Steve Welsh. Thank you to all of my other friends from various stages in life, especially two of my oldest friends, Kate Griwert and Erin Coughlin, and their families; Michelle Vidal; and my canine niece, Sophie, for their consistent reinforcement throughout graduate school.

This dissertation is dedicated to my parents, Charles Montalbano and Diane Bratton; my brother, Gregory Montalbano; and my husband, Leonardo Pereira da Silva, whose love and support has showed me the value of a balanced and vibrant life. I cannot thank, and apologize to,

my father, mother, and brother enough for tolerating my at times neurotic approaches to scholarship throughout childhood and adolescence. Without their patience, love, and encouragement to pursue a career in which the rewards are neither immediate nor obvious, I would not be where I am today.

To Leonardo, Charles, Diane, and Gregory

Chapter 1. Introduction: United States Government Monitoring Systems

## I. Introduction

United States government agencies at the municipal, territorial, state, and federal levels have long monitored religious expression, the union of religious belief and action, that they considered threatening to the American public. Religious groups, in turn, have claimed that government monitoring practices obstructed their religious expression. This dissertation examines how United States government agencies monitored three religious groups from the mid-nineteenth century to the present: Mormons in the Utah Territory, with a focus on the 1870s and 1880s; Quakers of the American Friends Service Committee (AFSC), with a focus on the late 1940s to the early 1960s; and Muslims in Brooklyn, New York, from 2002 to 2013. The backdrops of each of these three case studies distinguished them from other examples of government monitoring of religious institutions. In the first case study, the nineteenth-century federal and territorial governments perceived Mormon polygamists as threatening to state sovereignty. In the second case study, the Federal Bureau of Information (FBI) was preoccupied with international communist conspiracies permeating domestic networks, including the network of the AFSC Quakers. In the third case study, the NYPD applied the anti-terrorism platform of the federal government to its surveillance of Brooklyn Muslims. All three cases forced government agencies to reach some form of judgment about what constituted religion as byproducts of their monitoring systems.

I offer the following argument based on these case studies: government investigations of Mormonism, Quakerism, and Islam, prompted by the concerns about polygamy, communism, and terrorism, shaped the religious expression of these monitored groups in their specific

political and historical contexts. The Mormons were forced to abandon polygamy. The AFSC Quakers altered their institutional identity, veering away from their pacifist origins and toward a more radical, political, and legally-engaged organization. The Brooklyn-based Muslims, as well as many Muslims throughout the United States, altered their doctrinal and community practices in response to government surveillance. In other words, government officials probed not just whether subversion existed in these religious networks, but what constituted religion. A new perspective of religious surveillance in the United States emerges by analyzing how government officials have attempted to understand the religions of the communities they have monitored in response to the ideological threats of polygamy, communism, and terrorism, respectively.

The phrase, monitoring system, refers to the collection and ongoing analysis of information by government agencies about targeted subjects of interest. Monitoring system is intentionally used instead of surveillance to appropriately characterize the nineteenth-century historical case study, while surveillance system is used in the twentieth and twenty-first case studies, but definitions of surveillance are still helpful to understand this phenomenon. Sociologist David Lyon, who has written extensively on surveillance, has defined it as "any collection and processing of personal data, whether identifiable or not, for the purposes of influencing or managing those whose data have been garnered."[1] I examine how, why, and what kind of information different government agencies collected about religious communities within these distinct time periods, and how the three case studies shed light upon one another.

The changing nature of the protection of religion depends on the distinction between legally protected activity and crime, and more subtly, on the evolving boundary of what government agents considered legitimate and illegitimate religious expression. This evolving boundary

affected how United States government agencies in distinctive temporal and spatial environments grappled with what beliefs and actions could and could not be protected under the rubric of religious expression. The diverse contexts of these case studies justified organizing the chapters around each individual religious community, rather than around comparisons of the monitoring methods utilized across the three case studies.

Given the complexity of these themes, I chose to employ a historical-comparative method to answer the following question: did events in the past shape the present condition of government surveillance of religious communities in the United States? The resulting importance of my research was not merely which media government agents used to collect information, but also how they collected that information. My project therefore transformed into a related but distinctive one: since we cannot explain the history of government monitoring of religious communities with a linear or monolithic narrative, what patterns emerge from these case studies? The answer, I found, was that government agencies in different periods of the United States determined what forms of religious expression were legitimate within American culture and what constituted religion through their monitoring systems. The three monitoring systems provided a window into the shifting role of the government in defining legitimate religious expression when confronted with ideological threats.

Understanding past episodes of religious monitoring can assist contemporary policymakers in refashioning surveillance policies to reconcile the civil liberties of surveilled groups with the public good. Government agencies in the past, despite their unique political and legal environments, shared the challenge of interpreting the unfamiliar religions that they were monitoring. In the case of the Mormons of the Utah Territory, territorial officials contemplated

how to collect information about polygamists who concealed their marriage ceremonies and spouses. Supreme Court justices ultimately acknowledged that polygamy was a religious belief, but they did not offer a legal protection for polygamy in their rulings. In the case of the Quakers of the American Friends Service Committee, Federal Bureau of Information (FBI) agents simultaneously pondered allegations of communism and the extent to which the AFSC subscribed to the beliefs of the Quaker religion. In the case of the Brooklyn Muslims, the New York Police Department (NPYD) admitted to surveilling Muslim New Yorkers in *Raza v. City of New York*, but it did not concede that its surveillance policy was predicated on Islamic affiliation. Yet NYPD officers oftentimes surveilled Muslims without evidence of criminal activity.

The monitoring of religious communities is distinctive from contemporary mass surveillance, whose critics tend to invoke the infringement of privacy. None of the protagonists of these case studies hinged their arguments for religious expression on privacy claims. The mutual protection of religion and public expression by the First Amendment places them, along with religious expression, in the public sphere. The Mormons explicitly framed their ability to practice polygamy as religious in the Supreme Court. Even though nineteenth-century Mormons generally conducted their polygamous affairs in their private homes, their marriages were not hidden from the public. By the end of the nineteenth century, Mormons of the Utah Territory sought the approval of the federal government to reap the benefits of statehood. Mormons had by then relinquished the legal argument for polygamy in the Supreme Court.

The AFSC Quakers, on the other hand, questioned their surveillance by the FBI. The AFSC, an organization committed to nonviolence and social justice, was founded by fourteen Quakers in Philadelphia in April 1917. Quaker beliefs shaped their actions, but they did not

always explicitly justify their actions with Quaker beliefs. AFSC Quakers were surveilled at public protests and lectures that attracted audiences beyond the purview of the AFSC. The FBI was troubled by the prospect of encroaching upon a religious community, even though the AFSC was not synonymous with the Society of Friends. The AFSC benefitted from its affiliation with the well-known Quaker religion that was respected by the broader public, including the FBI. The FBI office in Philadelphia, in fact, defended the AFSC and pushed back on J. Edgar Hoover's surveillance program.

The FBI operated largely without constraints until the FBI surveillance program, COINTELPRO, was revealed by the Citizens' Commission to Investigate the FBI. J. Edgar Hoover led the COINTELPRO program, which surveilled and infiltrated seemingly subversive domestic political groups. The range of organizations investigated under COINTELPRO was vast, including anti-racism civil rights groups such as the Black Panther Party and American Indian Movement; anti-Vietnam groups, including student demonstrators; feminist organizations; and Puerto Rican independence groups, such as the Young Lords. AFSC Quakers were but one of the suspected affiliates of the Communist Party targeted in Hoover's program. The leader of the Citizens' Commission to Investigate the FBI, Haverford College professor William Davidon, was involved with the AFSC, and his wife, Ann Morrissett Davidon, commented on many of the FBI files on the AFSC analyzed in the second case study.

And third, the plaintiffs of *Raza v. City of New York*, filed in June 2013 in the Eastern District of New York and settled in January 2016, were under surveillance by the NYPD Intelligence Division since as far back as 2002. Plaintiffs included religious and community leaders in addition to mosques. In 2011, the Associated Press had released a sixty-page New

York Police Department report revealing photographs and notes dating back to 2002, which featured Muslim businesses, grade schools, student associations, websites, and mosques in the greater New York City area. Brooklyn-based Muslims argued they were severely limited in their abilities to practice their religion and discuss their beliefs. The NYPD refused to concede that the plaintiffs, which included mosques, were investigated based on their religious affiliations.

The ACLU and private counsel represented the plaintiffs, prevailing with reforms to the NYPD surveillance program in the January 2016 settlement. A handful of New York citizens convened in March 2016 to prepare for an April 2016 Fairness Hearing with the *Raza* judge about the settlement terms. This group included Muslim and non-Muslim citizens, political activists, and the lawyers from *Handschu*, the court case preceding *Raza*, who had filed a joint motion with the *Raza* lawyers when the Associated Press revealed in 2011 that the NYPD was spying on Muslim Americans. The *Handschu* lawyers acknowledged at this meeting that, while the settlement provided some protection of political and religious activities in the city, it did not completely solve the problem of unchecked power within the NYPD.[2]

All three case studies concern how United States government agencies addressed people perceived as detrimental to the nation during or after conflict: rebuilding the nation after the internal strife of the Civil War; fighting communism during the Cold War; and fighting uncertain enemies in the war on terror or, as it was renamed by the Obama administration in 2010 in an attempt to delink terrorism from Islam, the Countering Violent Extremism campaign.[3] Preserving a cohesive citizenry during these times was an underlying motivation for United States government agencies, past and present, to monitor these religious groups.

In the case of the Mormons, federal officials genuinely feared that polygamous marriages would unravel the moral threads of American society. Utah territorial officials did not have the means to combat polygamy on their own, but they might have done so with a more expansive and sophisticated monitoring network and greater state capacity. The courts prosecuted Mormon polygamists because of their actions, but the Supreme Court was forced to address the legal distinction between action and belief. The FBI investigated the AFSC because of the actions of its members, but its agents were restrained by the possibility that such actions had been inspired by religious beliefs that did not actually conflict with state interests. The NYPD surveilled certain Muslims because it believed, based on the actions of some radical Muslims, their beliefs could inspire other Muslims to act radically. By this point, the distinction between belief and action, in the mind of the NYPD, had dissipated significantly.

Scholars of history and religion have challenged the possibility of defining either religious belief or religious freedom, or of isolating religious activities from the outside world. Yet government agencies in all three case studies subscribed to the notion that there was a line between religious action and religious belief, as well as between religious and non-religious activity. Those lines factored into how they monitored the religious communities of interest. Though this distinction was arguably misinformed, it also showed that the monitoring agents of the Mormon and Quaker case studies tried to strike a balance between addressing threats to the nation and respecting religious expression.

The historical examples of varied government agencies and monitoring tactics that are analyzed in this research complements the narrative of surveillance in the digital age. Research on the topic of surveillance in the United States often focuses on the late twentieth century and

early twenty-first century, and it often employs the phrases "surveillance society" or "surveillance state" to examine the largely twenty-first-century phenomenon of the blurred line between governmental and commercial surveillance. There are many benefits to these approaches to surveillance research, but I demonstrate the significance of pushing back the study of surveillance to periods in which monitoring systems did not rely on big data collection. Federal marshals who collected information on Mormon polygamists, for instance, relied on the testimonies and eavesdropping of Mormon neighbors to collect information. Federal marshals, given the difficulties they faced in gathering evidence of polygamous marriages, eventually narrowed their monitoring to Mormon leaders. FBI agents who surveilled the AFSC Quakers in the twentieth century were able to focus on both minor and major members of the AFSC, but they also surveilled specific members based on leads from other government agencies, or based on surveying large gatherings. Even the NYPD targeted specific mosques and community leaders in its surveillance of Brooklyn Muslims, but the instructional manual it provided its officers to detect terrorism among the general Muslim population encouraged a form of mass surveillance.

To delineate a broader lesson for contemporary policymakers, these findings emphasize the need to examine specific communities entangled in government surveillance programs as opposed to offering generalizations about the impact of surveillance on all citizens. This point does not mark members of surveilled religious communities as unequal to their fellow citizens, but it emphasizes the disproportionate impact of government surveillance on certain individuals.

Two key foci of this dissertation, in summary, are the changing norms of governmental monitoring in response to looming ideological threats, and the distinction between legitimate and illegitimate kinds of religious expression, as determined by government agencies across time.

The second, third, and fourth chapters are dedicated to these three case studies, respectively, while the fifth chapter discusses the larger themes across the three case studies and provides concluding thoughts on future research on surveillance, religion, and media in the United States.

## II. Three Case Studies

The nineteenth-century Mormons of the Utah Territory, twentieth-century AFSC Quakers, and twenty-first-century Muslims of Brooklyn, New York, clashed with American culture in distinctive ways. Mormons in the territories were physically separated from citizens in the states, which augmented the unfamiliarity between territorial Mormons and the rest of the United States. After the 1846 military invasion of Mexico, the United States expanded its scope by acquiring territories of the West. Following the Treaty of Guadalupe Hidalgo in February 1848, Mexico lost almost half of its territory, turning the Mexican North into the American Southwest. The United States agreed to respect Spanish and Mexican land grants, but it removed a provision in the treaty that mandated the United States recognize all preexisting property rights in the region.[4] The United States acquired what became its territories, including the Territory of Utah, which was organized in 1850 and converted into a state in 1896.

The practice of polygamy by some Mormons cast them as social outsiders. To add to its foreignness, the Church of Latter-day Saints did not embrace mainline Protestantism as part of its identity, nor did many nineteenth-century mainline Protestant denominations embrace the Saints. Historian Philip L. Barlow has explained that since the antebellum era, Mormons interpreted the King James Version of the Bible through a unique, radical lens that reflected their distinctive worldview. The Saints remained committed to the King James translation, but they inherited it from the Protestantism they rejected, marking Mormonism as a different kind of Protestantism

that was incongruent with the mainstream culture.[5] Historian Patrick Mason has argued that nineteenth-century Mormons not only sought to distinguish themselves from mainstream Protestantism, but they embraced their interpretation of religion as a marker of their outsider status.[6] Historian W. Paul Reeve expanded the scholarship on Mormons as social outsiders by adding that the Protestant white majority of nineteenth-century America believed Mormonism represented a racial departure from mainstream society, in addition to a religious departure.[7] Historian William R. Hutchison has placed the Church of Latter-day Saints among the unique Protestant denominations which took no part in the mainline Protestant establishment, usually by choice, but managed to attract large numbers of followers and maintain regional authority.[8]

The Mormons' self-construction as peripherally Protestant shaped how court and territorial officials discussed polygamy. Federal government officials perceived the Mormons as a problem when they moved westward in 1848, troubling a nation already torn in its opinion about the West.[9] As legal historian Sarah Gordon has written, the reaction of the country to polygamy was shaped by mid-nineteenth-century politics, law, religion, and most significantly, a growing divide in national opinion of slavery. Polygamy was seen, particularly by northern evangelicals, as a new form of slavery that entrapped women. It was not until 1879 that the Supreme Court faced the question of polygamy and interpreted the religion clause of the First Amendment.[10] And it was not until the 1870s that the widespread prosecution of polygamy occurred, preceding the official end of the practice in 1890.[11] The fact that Mormon polygamy gave rise to the constitutional investigation of religious expression merited its inclusion as a case study in this dissertation.

Twentieth-century Quakers, principled by pacifism, inadvertently challenged the federal campaign against communism. Sociologist E. Digby Baltzell has written that twentieth-century Quakers occupied a central role in the elite of Philadelphia,[12] where the AFSC headquarters remain to this day. Although the AFSC was founded by fourteen Quakers in 1917, it never claimed to be a mouthpiece for the Society of Friends. FBI agents' investigations of the AFSC were complicated by the uncertain boundary between its official Quaker or Quaker-influenced commitment to social justice through AFSC projects. The compatibility of the AFSC with mainstream United States culture further exacerbated FBI investigations.

The FBI tracked members of the AFSC, but FBI agents debated the legitimacy of this surveillance. They questioned whether the AFSC was a Quaker organization, and if so, to what extent Quakerism shaped the actions of the organization. FBI agents' rhetorical and literal conflation of communism with religion indicated their uncertainty about the definition of religion itself. FBI agents faced a challenging problem: if the AFSC, built on domestic and international social justice, was not officially aligned with Quakerism but drew its membership from Quakers and those who sympathized with Quaker beliefs, the FBI needed to define the AFSC when crafting its surveillance system. The documents revealed how this uncertainty dictated certain FBI practices concerning the AFSC.

Furthermore, Quakers disagreed about the extent to which they associated with mainstream Protestantism, just as they disagreed about most aspects of social and political life, according to historian Gerald Jones. Similar to the Mormons, some Friends sought to build their identities against mainstream Protestant culture.[13] Historian William R. Hutchison has phrased this phenomenon slightly differently, suggesting that Quakers were among a handful of

Protestant groups that were "destined to maintain a separate identity" from the Protestant establishment.[14] Historian Patricia Appelbaum has contended that twentieth-century Quakers both shaped and were part of a minority Protestant pacifist culture that dissented from the warlike Protestant mainstream without completely separating from it.[15] Part of Quakers' insider status was attributed to well-known Quakers and AFSC members, such as the historian Rufus Jones, but Appelbaum has argued that Quakers were more theologically flexible than other pacifist-oriented Protestant denominations, such as the Mennonites and Church of Brethren, thereby allowing the Quakers to attract more converts and outsiders.[16] Appelbaum also specified that many prominent Quakers were "former mainline Protestants."[17] This characterization unites our Quaker and Mormon protagonists outside of mainstream Protestantism, with the main difference between the two as insiders and outsiders, respectively.

This characterization also helps to explain how twentieth-century Quakers of the American Friends Service Committee reconciled an insider and dissenting identity in American culture. Unlike late nineteenth-century Mormons or contemporary Muslims, mid-twentieth century Quakers were not constrained by negative public opinion. Although many organizations and groups were subjected to governmental surveillance around the same time, I chose this case study because J. Edgar Hoover's preoccupation with communism, which extended to the respected AFSC Quakers, demonstrated the extent to which government officials were willing to combat that threat.

The FBI did not primarily surveil the AFSC because of the Quaker practice of conscientious objection. However, the Supreme Court did address conscription in the mid-twentieth century in determining the limits of religious expression.[18] Scholars have argued that

religions of lesser known faiths hold restricted claims to religious liberties in their respective historical contexts.[19] While the AFSC Quakers were certainly not of an unknown faith, the early FBI documents attempted to outline the basic tenets of Quakerism, and its relevance to the organization, when determining which AFSC activities did or did not cross a line of acceptable behavior.

Unlike the organizational conflation of the Society of Friends and the AFSC, the post-September 11 NYPD surveillance program ideologically conflated Islam with terrorism, most evidently in its report, *Radicalization in the West: The Homegrown Threat*, which the NYPD used to train counterterrorism police officers. Unlike the cultures in which the Utah Mormons and AFSC Quakers lived, however, the Muslim Americans of the third case study lived in a comparatively more pluralistic American society. From 2002 until the 2016 settlement of *Raza v. City of New York*, the NYPD operated under severely weakened guidelines that emerged from the *Handschu* 1985 settlement, which limited the surveillance of political activities in New York City. In all three cases, no external authority moderated how the government agencies collected information. The NYPD autonomously investigated Muslim Americans during the time frame of its surveillance program. I chose this case because it was the most recent, large-scale example of governmental surveillance of religion. It was, simply put, my initial motivation to examine government monitoring of religious institutions in the United States.

Finally, all three case studies featured government authorities, members of the Supreme Court, the FBI, and the NYPD, who attempted to distinguish between religious and non-religious beliefs in the Mormon case study, religious and non-religious actions in the AFSC Quaker case study, and both dualities in the Muslim case study, all of which sculpted the malleable definition

of religion. This remolding was evident in the Supreme Court decision of the first major polygamy case, *Reynolds v. United States* (1878), in the FBI files on the AFSC, and in the curtailing of Muslim Americans' civil liberties in the NYPD surveillance program. Angela C. Carmella has succinctly outlined this paradox: "[T]he state is incompetent to act in matters of religion, but the state defines what conduct is religious and therefore outside its jurisdiction, and what conduct is secular and therefore within its jurisdiction."[20] In all three case studies, none of the government agencies attempted to explicitly define religion. They circumvented this complex question by defining what actions were or were not religious. Consequently, state governance over the missions of religious organizations has altered the way that communities define themselves.[21] Mormon polygamy, for example, was eradicated through the dual effort of federal territorial officials and the courts. Eventually, polygamy was no longer central to the definition of being a Mormon.

The Mormon problem, a phrase some nineteenth-century members of Congress used to discuss the Utah Territory, exemplified the difficulty the courts faced in identifying religious conduct. The Constitution does not define religion in order to permit a diversity of religions to coexist, rather than a hierarchy of preferred faiths.[22] The justices in the first major polygamy case in the United States Supreme Court, *Reynolds*, not only first interpreted the First Amendment, but they also formally examined the constitutional meaning of religion.[23] The Court acknowledged in *Reynolds*: "The word 'religion' is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in which the provision was adopted."[24] It was the Mormons, in other words, who compelled Supreme Court justices to decide on protecting religious action, but not

religious belief, in the *Reynolds* opinion. This is a widely accepted interpretation among legal scholars.[25] However, most disputes concerning religious expression occurred at the local or state levels until the federal government acquired power during the New Deal, when the federal courts expanded the range of Bill of Rights protections to include all levels of government.[26]

It was not until the mid-twentieth century that the United States Supreme Court established two standards for regulating actions derived from religious beliefs. The first standard, "compelling state interest," marked government actions permissible if there was a significant state interest to regulate a particular matter. This standard was a product of litigation over First Amendment freedoms, including speech, religion, and association, during the Cold War fears of the late 1950s and early 1960s.[27] The idea that the government needed a "compelling state interest" first appeared in *Sweezy v. New Hampshire* (1957), in which the Court overturned the conviction of the socialist professor, Paul Sweezy, for not answering questions from the New Hampshire Attorney General about his lectures or involvement with the Progressive Party.[28] The "compelling interest" standard held true until *Employment Division of Oregon v. Smith* (1990), when the Court ruled that the government no longer needed to demonstrate a "compelling interest" to enforce a law, even in matters regarding the free exercise of religion.[29] The second standard was the "alternate means" test, first invoked by the Supreme Court in *Sherbet v. Verner* (1963), to rule against the denial of unemployment compensation by South Carolina to a Seventh-Day Adventist who refused to work on Saturdays. Under this standard, the state had to offer an "alternate means" to any conflict in order to respect an individual's religious obligations.

The distinction between religion and non-religion in the United States did not occur solely within the courts. The FBI preserved certain boundaries in order to respect the religious

expression of individual Quakers. For example, FBI agents did not report on Quaker meetings, which they distinguished from AFSC-sponsored gatherings. Their perhaps unintentional effort to separate religious from political activity was a challenging feat that they acknowledged in their notes on AFSC members. Nineteenth-century government officials, as far as the evidence shows, did not infiltrate Mormon religious services. This restraint was likely attributed to the fact that Mormon marriages operated under relative secrecy, as they were not even recorded on paper, and polygamy was more easily detectable in social interactions than during formal religious rituals.

The case of post-September 11 Brooklyn Muslims was distinctive from the first two cases in that, although *Raza* reached a settlement in January 2016, the scope of ongoing government surveillance of Muslim Americans remains undetermined. Moreover, the NYPD did not attempt to understand Islam through its surveillance program. The *Radicalization in the West* report utilized by the NYPD to surveil Muslim New Yorkers documented this omission. The identification of legitimate religious expression in this case study was determined in advance by the NYPD report, offering little room for the same kind of deliberation about religion with which government agents of the Mormon and Quaker case studies engaged. Federal pressure on the NYPD to defend United States national security likely undermined any desire among NYPD officers to probe whether the surveillance program respected Islamic religious expression.

**III. Assessing the Collection of Information**

Surveillance across historical periods can be characterized by religious themes: the vigilant eye, the tracking of movement and actions, and the use of visible and invisible sanctions, all of which highlight the connection between religion and observatory media.[30] Another commonality of monitoring across time is that contemporary surveillance tactics, such as those

used by the NYPD, are derived from earlier tactics, such as gossiping in the case of the Mormons and eavesdropping in the case of the AFSC Quakers. However, monographs dedicated explicitly to the history of surveillance of religious organizations in the United States do not exist, nor is this analysis a comprehensive history of government surveillance of religious expression. The most well-known aspect of governmental surveillance of organizations in the twentieth century concerns those subversive groups surveilled under the COINTELPRO program.[31] Governmental monitoring that occurred during the nineteenth century is less conducive to summary, given that government agencies created specifically to surveil individuals and organizations did not emerge until the twentieth century.

The variance across the three cases showed that the monitoring strategies and objectives of the agencies differed. For example, the NYPD operated autonomously in its surveillance program, while the FBI collaborated with a network of agencies that collected information of interest to them, and then forwarded that intelligence to the FBI. In each of the three cases, the government agencies deliberated how to balance the objectives of their monitoring systems with their understandings of the three religions.

The Mormon case study examines how territorial officials collected information about Mormon polygamists, when systematic governmental monitoring commenced and polygamy cases entered the United States Supreme Court. The Mormons viewed federally appointed judges and other officers situated in the territory with contempt. Working from tip-offs or rumors, officials investigated Mormon men they suspected were polygamists. They tried to implicate polygamists by observing their living situations or eavesdropping on conversations. Mormon leaders were early targets of polygamy investigations by the federal government, but when

leaders attempted to evade arrest, federal prosecutors searched for any polygamist they could find.

Documents discussing the collection of information about polygamy dated from the 1870s to the 1880s. They included United States Supreme Court polygamy cases, which I selected for the detail they provided about how information was collected. The federal government began to systematically monitor Mormons in the 1880s. Congress began to more actively discuss the Mormon problem, and Mormons appealed to the United States Supreme Court from the Supreme Court of the Utah Territory. The overarching concern in the first Supreme Court case was the legitimacy of polygamy as a form of religious expression, and after that notion was quickly squashed, the legitimacy of the prosecutions of Mormon polygamists became the prevailing concern. Federally appointed officials in the Utah Territory, and judges at the various levels of the polygamy cases, grappled with an enigmatic culture. They sought to preserve sovereignty, which included a moral order characterized by monogamy.

Mormons, in turn, argued that marriage was a sacrament rather than a contract, and that polygamy was the Mormon sacrament for marriage. This claim about marriage suggested that Mormonism was not Protestant, whether or not that was their intention. One Mormon claimed that his religion was congruent with Christianity despite the practice of polygamy, but the Protestant majority public largely rejected this sort of claim. As Mormon historian Richard Bushman has written, "The Protestant establishment in the United States considered plural marriage an unpardonable offense against Christian morality and civilized behavior."[32] Yet the nineteenth-century Mormons were persistent. In the first Supreme Court case, when polygamy had already started to decline among the Mormon population, Mormon leaders unsuccessfully

encouraged Reynolds to argue that polygamy was a form of religious expression. Mormons later reframed their polygamy arguments in the Supreme Court around topics such as the fairness of juries in the original trials, and the legality of the evidence used against them.

The second case study on the American Friends Service Committee, which was briefly named the Friends National Service Committee during its first month, examines the contents of FBI reports on the AFSC from the late 1940s to the early 1960s. I examined the trove of FBI documents in the AFSC archives in Philadelphia, Pennsylvania. The first meeting of the AFSC united diverse Quaker groups to address pressing global emergencies. The United States had just declared war on Germany and its allies, and the Society of Friends anticipated a conflict of interest for young Quakers facing the draft. Consequently, the initial objective of the AFSC was to provide Quakers with alternatives to compulsory military service. Some members tried to locate, visit, and support individuals whose principles conflicted with the mandates of the draft.[33] Within a year, the AFSC amassed enough public support, financial contributions, and volunteers to sustain its operations on a larger scale. Today, the AFSC refers to itself as a movement of cross-generational individuals committed to a broad range of projects on poverty, inequality, injustice, and international relations.[34]

In 1921, the FBI began surveilling the AFSC for its commitment to peace and social justice, which allegedly linked its members to communist networks. The first document was produced by a New York-based FBI agent who traveled to Philadelphia to investigate possible AFSC cooperation with a Russian relief committee. AFSC members actively engaged in relief work and intellectual collaboration with people and communities from around the world, regardless of the political landscape. While the particularities of AFSC projects varied

throughout the twentieth century, the FBI feared that AFSC activities would encourage the growth of communism within the country.

Throughout the period during which the FBI surveilled the AFSC, the FBI relied on information from other government agencies, including the Central Intelligence Agency (CIA), Navy, National Security Agency (NSA), and the Internal Revenue Service (IRS), which transmitted information to the FBI. Undercover FBI agents attended protests, academic conferences, and public lectures featuring or hosted by prominent AFSC leaders. Some of these intelligence agencies relayed clips from mass media publications to the FBI, many of which were sent to them by fearful citizens inquiring about the alleged communist nature of the AFSC. The FBI often answered these citizen letters, some of which came from non-east coast members of the Society of Friends who disagreed with the projects of the AFSC.

The extent to which the AFSC represented the Society of Friends appeared in the documents under J. Edgar Hoover's supervision, shaping how the FBI approached AFSC activities. The case of the AFSC Quakers constituted a crucial example of how the federal government determined whether AFSC subversive actions were based on Quakerism, and what the implications were of such a correlation. The uncertainty of the FBI about the religious nature of the AFSC reminds us that the conditions for protecting religious expression has changed through time.

Government agents who deliberated protecting Mormon and Quaker expression contrasted with the NYPD officers, who did not readily consider Islamic expression. The *Radicalization in the West* NYPD report outlined how to detect a Muslim terrorist, which lacked both credible evidence and insight into the mind of a terrorist, Muslim or otherwise. The 2011

Associated Press release had also instigated a related federal lawsuit in New Jersey, *Hassan v. City of New York*, based on NYPD surveillance of Muslim Americans. District Judge William Martini of *Hassan* claimed that the plaintiffs' injuries stemmed not from surveillance itself, but from the exposure of the surveillance program by the Associated Press.[35] Judge Martini wrote in the *Hassan* decision: "None of the Plaintiffs' injuries arose until after the Associated Press released unredacted [sic], confidential NYPD documents and articles expressing its own interpretation of those documents. Nowhere in the Complaint do Plaintiffs allege that they suffered harm prior to the unauthorized release of the documents by the Associated Press. This confirms that Plaintiffs' alleged injuries flow from the Associated Press's unauthorized disclosure of the documents. The harms are not 'fairly traceable' to any act of surveillance."[36] The statement would have been less surprising had it been offered by a representative of the NYPD, but this strategy of blaming the press for harms done by illegal government surveillance was not original.

The FBI of the mid-twentieth century avoided contact with journalists of certain newspapers in fear of criticism about FBI surveillance practices. J. Edgar Hoover placed the *New York Times* and the *Washington Post* on a "Do Not Contact" list when the newspapers refused to write bad reviews of the first critical book about Hoover and the FBI.[37] The NYPD, unlike the FBI, is a municipal institution, but its Muslim surveillance program mirrored FBI and CIA surveillance policies. The NYPD of post-September 11 New York also embraced the secretive, unchecked surveillance that the FBI had once utilized in the days of J. Edgar Hoover. What was original about the blaming of the press in *Raza*, on the other hand, was that Muslims themselves claimed the Associated Press revelations stigmatized their mosques and non-profit organizations.

The primary means for collecting information in the *Raza* case were the efforts of NYPD plainclothes officers and a nineteen-year-old informant. In order to gain the trust of the communities the informant was infiltrating, he showed interest in their mosques and community groups. The informant was instructed, among other tasks, to listen to conversations in mosques and among Muslim youths outside of the mosques; listen for buzzwords such as jihad or revolution; report radical rhetoric; photograph imams and congregants in mosques; collect cell phone numbers of congregants; and photograph the names of people who attended study groups and classes on Islam. Surveillance cameras provided supplemental information to the NYPD.

The Muslim case study was, in some ways, more straightforward than the first two case studies. The NYPD admitted to its surveillance program in the *Raza* case, but refused to agree with the plaintiffs that it based its investigations on Islamic affiliation. The NYPD operated as an autonomous agent, as opposed to the network of surveilling agents involved in combatting nineteenth-century polygamy. The cameras surveilling the plaintiffs of *Raza* were easily located, in contrast to the rumors and social networks used as sources of information in the Mormon case.

However, it was also more difficult to analyze the recent past. The impact of the recent *Raza* decision on Muslim American communities in New York was impossible to confirm conclusively, as surveillance continues to exist in the city. But the fact that the NYPD produced the *Radicalization in the West* report, which was different in that it explicitly taught police officers how to detect a terrorist through a four-phase checklist, starkly contrasted with the first two case studies, in which there were no definitive models for predicting subversion.

Despite the distinctive challenges to analyzing each case study, a commonality emerged in the boundaries drawn by government agents within all three of them. In the case of the

Mormons, for instance, domestic networks and spaces were targeted, but the questions that judges and congressmen posed about Mormon theology suggested they were more inquisitive about Mormon culture than were NYPD officers about Islamic customs. The primary undercover NYPD informant asked pointed questions about political opinions rather than nuanced questions about what it meant to be a Muslim, or how various tenants of Islamic faith shaped the actions of Muslims. In the case of the AFSC Quakers, the majority of face-to-face surveillance occurred neither in domestic nor worship spaces, but in open, public gatherings. The FBI also consulted AFSC publications, newspaper articles, and mail correspondence, and agents at times challenged the authority of J. Edgar Hoover. Post-September 11 NYPD officers utilized a predetermined framework for detecting Islamic terrorism without challenging the authority from which the report came. The revelation that NYPD informants and undercover agents had permeated Muslim communities deterred Muslim Americans from attending mosques and community events, as they feared being incriminated in crimes with which they had no association.

This chilling effect described by Muslim Americans, or the effect of state actions on public expression, was first invoked in the Supreme Court in 1952 in *Wieman v. Updegraff*, when the Court unanimously struck down a state statute that mandated people applying to state jobs to swear an oath that they had not affiliated with designated subversive organizations within the past five years. From then on, judicial opinions referenced the chilling effect when discussing free expression.[38] At this time, government officials rescinded offers of employment from suspicious individuals, or placed them on banned or investigative lists.[39] Courts began responding to governmental censorship by creating First Amendment protections against state stifling of speech, especially speech pertaining to communism or the civil rights movement. Such

methods of suppressing expression in the mid-twentieth century were far more subtle than the surveillance of Muslims in Brooklyn, where the NYPD infiltrated mosques and surveilled individuals who were not directly suspected of terrorism. But the legacy of political surveillance in the United States undoubtedly shaped the discussions about the surveillance of AFSC and Muslim communities. The preoccupation by FBI agents about whether the AFSC was a Quaker organization reflected this uncertain boundary between political and religious activity, as did the fact that the legal precedent for *Raza* was the 1985 *Handschu* settlement, which resolved illegal political surveillance in New York.

Finally, the ethical dilemma at the core of each of these case studies was that government monitoring of a handful of leaders within each community prompted the unchecked investigations of others sharing that religious or institutional affiliation. The Mormon case study was a bit different in that officials first focused on entire communities, followed by Mormon leaders, and then communities once again when polygamy had already started to decline. The unproven communist ties of some prominent AFSC Quakers instigated broad surveillance of AFSC personnel. The actions of a handful of radical Islamic terrorists implicated entire Muslim communities across the greater New York City area, not to mention the United States. By focusing on the monitoring of individuals who share a religious affiliation, historically and today, we can assess broader patterns about the evolving thresholds and circumstances for surveillance. Assessing the historical protection of religious expression in the face of polygamy, communism, and terrorism provides a small but significant step toward understanding, and ideally minimizing, unbounded government surveillance in the United States.

Chapter 1 Endnotes

---

[1] David Lyon, *Surveillance Society: Monitoring Everyday Life* (Philadelphia: Open University, 2001), 2.

[2] Public Meeting about the *Raza* Settlement (meeting, A. J. Muste Memorial Institute, New York, NY, March 31, 2016).

[3] Marc Ambinder, "The New Term for the War on Terror," *The Atlantic*, May 20, 2010, www.theatlantic.com/politics/archive/2010/05/the-new-term-for-the-war-on-terror/56969.

[4] David Correia, "Making Destiny Manifest: United States Territorial Expansion and the Dispossession of Two Mexican Property Claims in New Mexico, 1824–1899," *Journal of Historical Geography* 35, no. 1 (2009): 87-88, doi:10.1016/j.jhg.2008.02.002.

[5] Philip L. Barlow, *Mormons and the Bible: The Place of the Latter-day Saints in American Religion* (New York: Oxford University Press, 2013), 162.

[6] Patrick Mason, *The Mormon Menace: Violence and Anti-Mormonism in the Postbellum South* (New York: Oxford University Press, 2011), 172.

[7] W. Paul Reeve, *Religion of a Different Color: Race and the Mormon Struggle for Whiteness* (New York: Oxford University Press, 2015), 4.

[8] William R. Hutchison, "Protestantism as Establishment," in *Between the Times: The Travail of the Protestant Establishment in America, 1900–1960*, ed. William R. Hutchison (New York: Cambridge University Press, 1989), 6.

[9] J. Spencer Fluhman, *A Peculiar People: Anti-Mormonism and the Making of Religion in Nineteenth-Century America* (Chapel Hill: The University of North Carolina Press, 2012), 106.

[10] Michael S. Ariens and Robert A. Destro, *Religious Liberty in a Pluralistic Society* (Durham: Carolina Academic Press, 1996), 187.

[11] Sarah Gordon, *The Spirit of the Law: Religious Voices and the Constitution in Modern America* (Cambridge: The Belknap Press of Harvard University Press, 2010), 175.

[12] E. Digby Baltzell, *The Protestant Establishment: Aristocracy & Caste in America* (New Haven: Yale University Press, 1964), 66.

[13] Gerald Jones, *On Doing Good* (New York: Charles Scribner's Sons, 1971), 13.

[14] Hutchison, "Protestantism as Establishment," 6.

[15] Patricia Appelbaum, *Kingdom to Commune: Protestant Pacifist Culture between World War I and the Vietnam Era* (Chapel Hill: University of North Carolina Press, 2009), 44.

[16] Appelbaum, *Kingdom to Commune*, 40.

[17] Patricia Appelbaum, "Protestant Mysticism: Pacifists and the 'Practice of the Presence,'" *Quaker History* 94, no. 2 (2005): 2, http://www.jstor.org/stable/41947563.

[18] See *United States v. Kauten* (1943); *Berman v. United States* (1946); *United States v. Seeger* (1965); *Welsh v. United States* (1970).

[19] Derek Davis has suggested that Supreme Court decisions pertaining to conscription cases created a functional model for understanding religion, which defined religion according to its social function and protected new or less traditional religions based on their functional qualities. The FBI tried to understand the AFSC functionally in this way, through AFSC relations to and with communist organizations and individuals. See Derek Davis, "The Courts and the Constitutional Meaning of 'Religion': A History and Critique," in *The Role of Government in Monitoring and Regulating Religion in Public Life*, ed. James E. Wood, Jr. & Derek Davis (Waco: Baylor University, 1993), 101.

[20] Angela C. Carmella, "The Religion Clauses and Acculturated Religious Conduct: Boundaries for the Regulation of Religion," in *The Role of Government in Monitoring and Regulating Religion in Public Life*, ed. James E. Wood, Jr. & Derek Davis (Waco: Baylor University, 1993), 25.

[21] Carmella, "The Religion Clauses and Acculturated Religious Conduct: Boundaries for the Regulation of Religion," 35.

[22] Davis, "The Courts and the Constitutional Meaning of 'Religion,'" 90.

[23] Davis, "The Courts and the Constitutional Meaning of 'Religion,'" 91.

[24] Davis, "The Courts and the Constitutional Meaning of 'Religion,'" 92.

[25] "The Belief-Conduct Distinction," *Justia*, 2016, www.law.justia.com/constitution/us/amendment-01/14-belief-conduct-distinction.html.

[26] David Sehat, *The Myth of American Religious Freedom* (New York: Oxford University Press, 2011), 4.

[27] Stephen A. Siegel, "The Origin of the Compelling State Interest Test and Strict Scrutiny," *The American Journal of Legal History* 48, no. 4 (2006): 356, http://www.jstor.org/stable/25469981.

[28] Siegel, "The Origin of the Compelling State Interest Test and Strict Scrutiny," 364.

[29] James E. Wood, Jr., "Government Intervention in Religious Affairs: An Introduction," in *The Role of Government in Monitoring and Regulating Religion in Public Life*, ed. James E. Wood, Jr. and Derek Davis (Waco: Baylor University, 1993), 8-10.

[30] Jeremy Stolow, "Introduction: Religion, Technology, and the Things in Between," in *Deus in Machina: Religion, Technology, and the Things in Between*, ed. Jeremy Stolow (New York: Fordham University Press, 2013), 10.

[31] Select scholarship on COINTELPRO and groups surveilled under its radar include: Nelson Blackstock, *COINTELPRO: The FBI's Secret War on Political Freedom* (New York: Monad Press, 1975); Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Dissent in the United States* (Boston: South End Press, 1990); David Cunningham, *There's Something Happening Here: The New Left, the Klan, and FBI Counterintelligence* (Berkeley: University of California Press, 2004); James Kirkpatrick Davis, *Assault on the Left: The FBI and the Sixties Antiwar Movement* (Westport: Praeger, 1997); Joshua Bloom, *Black Against Empire: The History and Politics of the Black Panther Party* (Berkeley: University of California Press, 2013); Ward Churchill, "'To Disrupt, Discredit and Destroy': The FBI's Secret War against the Black Panther Party," in *Liberation, Imagination, and the Black Panther Party: A New Look at the Panthers and Their Legacy*, Kathleen Cleaver and George Katsiaficas, eds. (New York: Routledge, 2001); Ward Churchill, *Agents of Repression: The FBI's Secret Wars against the Black Panther Party and the American Indian Movement* (Boston: South End Press, 1968); Kenneth O'Reilly, *Racial Matters: The FBI's Secret File on Black America, 1960–1972* (New York: Free Press, 1991); Bud Schultz, *The Price of Dissent: Testimonies to Political Repression in America* (Berkeley: University of California Press, 2001); Steve Hendricks, *The Unquiet Grave: The FBI and the Struggle for the Soul of Indian Country* (New York: Thunder's Mouth Press, 2006); Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (New York: The New Press, 1997); Stew Magnuson, *Wounded Knee 1973: Still Bleeding: The American Indian Movement, the FBI, and their Fight to Bury the Sins of the Past* (Courtbridge Publishing, 2013); Michael Newton, *The FBI and the KKK: A Critical History* (Jefferson, N.C.: McFarland & Company, 2005).

[32] Richard Lyman Bushman, *Mormonism: A Very Short Introduction* (New York: Oxford University Press, 2008), 94-95.

[33] Jack Sutters, "The Birth of the AFSC" in *Undaunted Spirits: True Stories of Quaker Service*, ed. Melissa K. Elliott (American Friends Service Committee: Philadelphia, 2002), 18-20.

[34] Lou Schneider, "Introduction" in *Undaunted Spirits: True Stories of Quaker Service*, ed. Melissa K. Elliott (American Friends Service Committee: Philadelphia, 2002), ii-iii.

[35] Harry Bruinius, "Case dismissed against NYPD over surveillance of Muslims in New Jersey," *The Christian Science Monitor*, February 21, 2014, accessed June 10, 2015, http://www.csmonitor.com/USA/Justice/2014/0221/Case-dismissed-against-NYPD-over-surveillance-of-Muslims-in-New-Jersey-video.

[36] *Hassan v. City of New York*, Opinion of William J. Martini, District Judge, Civ. No. 2:12-3401, February 20, 2014, accessed January 25, 2016, http://www.leagle.com/decision/In%20FDCO%2020140221B93.xml/HASSAN%20v.%20CITY%20OF%20NEW%20YORK#.

[37] Ronald Kessler, *The Bureau: The Secret History of the FBI* (New York: St. Martin's Press, 2002), 108-109.

[38] "The Chilling Effect in Constitutional Law," *Columbia Law Review* 69, no. 5 (1969): 808, doi: 10.2307/1121147

[39] Monica Youn, "The Chilling Effect and the Problem of Private Action" in *Vanderbilt Law Review* 66, no. 5 (2013): 1485-1486.

Chapter 2. The Mormons of the Territory of Utah: Distinguishing Between Belief and Action

"From the start, Latter-day Saints have maintained a relatively high but usually manageable level of tension with their surrounding society."[40] — Rodney Stark, *The Rise of Mormonism* (2005)

## I. Introduction

Nineteenth-century Mormon leaders struggled with United States territorial and federal lawmakers over the autonomy of the Church of Latter-day Saints. Utah was granted statehood in 1896, marking the culmination of that struggle. The Territory of Utah, created in 1850, extended east to the Rocky Mountains, west to the Sierra Nevada Mountains, north to the forty-second parallel, and south to the thirty-seventh parallel. The size of the Territory of Utah was reduced in 1861, when the western Rockies were transferred to the Colorado Territory, and the northeastern corner was transferred to the Wyoming Territory.[41] When placed on a contemporary map of the United States, the northern and southern boundaries spanned modern-day Nevada, Utah, southwestern Wyoming, and western Colorado.

Federal officers, judges, and congressmen launched a comprehensive strategic campaign against the Utah Mormons by monitoring suspected polygamists and questioning their ability to adapt to American society. This chapter examines the rationale for such monitoring practices and the court cases that ensued, which both directly and indirectly considered the monitoring practices in the Mormons' varied arguments about the freedom of religious expression or unfair trials and juries. Individual authors in the early to mid-nineteenth century expressed similar skepticism about the Mormons in mass media publications. Nationwide anti-Mormon sentiment encompassed concerns about women's rights and slavery. It was in this environment of pervasive anti-Mormonism that the United States Supreme Court first distinguished between faith and

action, and interpreted the extent of the free exercise of religion in the First Amendment. This distinction resulted in an important legal precedent for years to follow. Sovereignty over the Territory of Utah formed the core of the polygamy debates, particularly in the event that the territory was granted statehood. Polygamy was a non-democratic institution that would have clashed with the rest of the nation, and was therefore not just a threat to the family structure of the United States, but to United States governance.

Federal officers collected information in the territories, lawmakers advocated anti-polygamy legislation, and members of the judiciary ironed out the distinction between belief and action in the First Amendment. Mormon leaders, in turn, believed that characterizing polygamy as a religious practice granted them the best defense against judicial and legislative interference. Cultural bias and opposition to polygamy emanated from many networks, including those of writers, women's groups, religious leaders, and politicians, but legislative and judicial enforcement did not effectively combat polygamy until the early 1880s. The three case studies of this dissertation constitute a broader narrative about the shifting constitutional guarantee of religious freedom, in which the distinction between belief and action regarding polygamy in the Supreme Court cases is a key theme. One of the surprising findings from this case study was the willingness of non-Mormons to seriously consider the Mormon argument about polygamy. However, this consideration did not match the reliance of federal officials on spying and gossip to monitor polygamists in the Territory of Utah.

The authors of an 1842 editorial published in a New Orleans newspaper, *The Daily Picayune*, contemplated the future of Mormonism. It was likely penned by a combination of the founders of the *Picayune*, F. A. Lumsden and General George Wilkins Kendall, partners in

Lumsden, Kendall & Co., and the manager of the paper, Colonel A. M. Holbrook, all of whose names were listed on the front page where the editorial was printed. Frederic Hudson, a leading American journalist and longtime editor for the *New York Herald*, known for his innovative use of horses, trains, and the telegraph to expedite the transferral of information to the *Herald*,[42] wrote that the *Picayune* quickly became popular due to Kendall's pleasant, terse writing style.[43] After pondering the role of religious liberty in the United States since the Constitution, the authors stated that constraints mitigated the impact of outlandish religious beliefs: "But happily the freedom of religious opinion, like the freedom of the press, always carries an antidote with it which is of crushing the bane that the fraud, folly, or licentiousness of either might engender."[44]

They further raised the possibility of "new fangled sects and outré religious associations," which "start up in the greatest numbers, and thrive, for a time, at least, with most luxurious growth,"[45] categorizing Mormonism as unusual and peripheral to the Christian center of the United States. Despite having no firsthand interaction with the Mormon people, the article offered a glimpse into the mindset of how the above-educated American citizen might have viewed Mormonism: as an odd, deplorable, distant religion that would deteriorate with time. The authors also mused on the distinction between Mormons' "mere religious opinions" and the ongoing continuation of their doctrinal practices, a distinction that mirrored the belief-action dichotomy that would later feature prominently in the first polygamy case in the United States Supreme Court:

> If the stories of the Mormons be true, they are a dissolute, profligate, abandoned set; and while we would have them visited with the most strict surveillance of the civil law, in every instance in which they violate it, we would be opposed to interfering with their mere religious opinions, however absurd and unscriptural they may be, as we would also be against inflicting on them any penal disability for the profession of them. But late

> accounts show that their detestable doctrines—for detestable they seem to be—are destined to be short-lived, and to prematurely fall before the genius of unfettered liberty of conscience and universal intelligence.[46]

Journalists and writers of the mid-nineteenth century sometimes used the term surveillance to refer to the monitoring of Mormons by other Mormons: "No man in Utah escapes the surveillance of the secret police, unless it be Brigham Young himself."[47] The *Springfield Republican* newspaper editor, Samuel Bowles, observed from traveling through the American West that Mormons were under "such strict surveillance and authority that most of them would not even dare to disobey or protest" the autocratic authority under which they lived.[48]

The authors of the *Picayune* article, however, used the term surveillance to characterize a legal framework for assessing the social norms of the Mormons. They predicted the controversial tenets of Mormonism would dwindle through time and, consequently, that Mormon culture was not threatening to civil society. The credibility of this assertion might have been perceived as tenuous. The authors admitted upfront that their knowledge of Mormons relied purely on stories. Moreover, the "unfettered liberty of conscience and universal intelligence" of fellow citizens, rather than the hand of the law, would prevent polygamy from permeating the states. All that being said, they advised against violating Mormons' religious beliefs, regardless of how odd such beliefs might seem.

Theodore Schroeder, the prominent non-Mormon lawyer and free speech advocate who was integral to the early foundation of the American Civil Liberties Union (ACLU), defended polygamy more explicitly. Schroeder has been regarded as having accomplished more for free expression in America than any single person.[49] His collection of books and pamphlets on the Saints was also one of the most complete outside of official Church circles.[50] He became

skeptical of religion when his Catholic mother was disowned by her family for marrying a Lutheran. While traveling through Utah, he connected his mother's experience with religion to the persecution of the Mormons. Schroeder's sympathy for the Mormons initiated his legal career in Salt Lake City.

Despite his initial defense of the Mormons, he changed his mind upon seeing how they treated their apostates, as well as how sexuality factored into the religion. As historian David Brudnoy mused, Schroeder's pro-Mormon and subsequent anti-polygamy stance culminated with his legal assistance to Utah statehood: "Mormonism puzzled him. . . . Certain Mormon beliefs and practices disturbed him; against these he waged his warfare . . . [H]e discerned nothing of the scientific temper or method in polygamy, which seemed to him the outstanding feature of the faith."[51] He began writing anti-Mormon diatribes and founded his journal, *Lucifer's Lantern*, to publish them from 1898 to 1900.[52]

Schroeder's later legal career, in which he focused on defending free speech, followed his circulation of an anti-Mormon pamphlet that was marked as obscene literature. Schroeder most prominently took part in Mormon affairs by blocking the polygamist Brigham Roberts from taking his seat in Congress.[53] Uniquely, however, Brudnoy remarked that while most anti-Mormons fought Mormonism with the support of a specific Christian denomination, "Schroeder crusaded against Mormonism without benefit of clergy,"[54] attacking them from an "agnostic, rather than a traditional perspective."[55] Schroeder's underlying concern was the relationship between church and state, rather than the perils specific to Mormonism.

Schroeder advocated judicial activism to defend free speech through this non-religious approach. He believed that expression was an individual liberty protected by the First

Amendment.[56] He, however, considered polygamy as a form of action. Defending a free speech appeal on behalf of the Free Speech League, an organization founded in 1902, Schroeder placed Mormonism alongside other American religions, seemingly protecting Mormons' right to beliefs that he personally found detestable: "All stand equal before the law, the Protestant, Catholic, Mormon, Mohammedan, the Jew, the Free Thinker, the Atheist. Whatever may be the view of the majority of the people the court has no right and the majority has no right to force that view upon the minority, however small."[57]

Mormons themselves never cited free speech as a legal recourse, but they were angered by the judicial interpretations of the law and by what they professed to be legislative violations of their religious expression. Children were questioned about their parents, families were coerced to testify against each other, and spies peered into men's family relations.[58] The 1886 diary of a young Mormon man recounted the arrest of his father who answered the door expecting a friend, but instead was greeted by an officer: "Imagine his surprise when a stranger accosted him by saying, 'I arrest you in the name of the law.'"[59] However, as Utah prisons increasingly filled with Mormons, polygamy sentences became a mark of honor. Mormon wards organized gatherings in honor of those departing or returning. Newly imprisoned polygamists were initiated into the jailed brotherhood by entertaining fellow Mormon prisoners with songs, dances, speeches, or other performances.[60] By resisting obedience to the law, according to historian David Bitton, Mormons believed they were defending polygamy as a form of religious expression, and as martyrs and true defenders of the Constitution.[61]

Information collection has played a crucial role in the historical relationship between individuals and their governing realms.[62] Philip H. J. Davies has written that the problem of

organizing large-scale governmental intelligence is that multiple agencies necessarily piece together "fragmentary and incomplete information into as coherent a picture as possible."[63] The nineteenth-century system for monitoring the Mormons in the Territory of Utah worked to articulate a concept of what it meant and what it would mean to be an American by eradicating polygamy prior to Utah statehood. Meanwhile, the Mormons attempted to forge their own distinctive American path.

**II. Overview of the Legislative and Judicial Campaign**

The Church of Jesus Christ of Latter-day Saints was founded in 1830 in western New York by Joseph Smith. Mormonism remained largely unmentioned in government publications and newspaper articles until the 1840s, when the Latter-day Saints started practicing polygamy. John C. Bennett, one of Joseph Smith's former trusted advisers who left the Church after serving as city mayor of Nauvoo, Illinois, published Smith's polygamous doctrine in newspapers and magazines in 1842.[64] The details of polygamy and other information about Mormonism from Bennett's four-letter series later developed into his exposé, the *History of the Saints*.[65] The book was widely circulated, claiming to reveal the secret polygamy practices of Nauvoo.[66] This exposé of Mormonism and its founder depicted an otherwise mysterious culture to the American public. Most Mormons believed Smith's denial in the exposé that he was a polygamist.[67] Though Bennett's depiction of polygamy was generally accurate, he offered little support to his claim that Mormons were planning a "territorial conquest."[68] Nonetheless, the federal government sensed the threat of Mormon political, cultural, and economic autonomy that prompted its legislative and judicial campaign against polygamy.

In July 1847, the Latter-day Saints arrived in the Salt Lake Valley, a few months before the area of Utah and much of the American Southwest was transferred from Mexico to the United States. The Treaty of Guadalupe Hidalgo finalized this transfer on February 2, 1848. The Saints of the Utah area petitioned the United States for statehood in 1849, but their petition was denied. However, a portion of the Compromise of 1850 created the Territory of Utah, signed into law by President Millard Fillmore on September 9, 1850. The act established a territorial legislature and delegate to Congress, as well as major offices appointed by the president, including territorial governor, secretary of the territory, United States marshal, United States attorney, chief justice, associate justice, and superintendent of Indian affairs. Residents of the territories often resented this policy, since they were unable to elect their own government officials. In particular, conflicts arose between territorial judges and locally elected county officials.[69]

Federal troops invaded the Territory of Utah in 1857 under President Buchanan's orders. President Buchanan, in an address to Congress the following year, claimed there was reason to believe, based on a report from the non-Mormon Governor Alfred Cumming, that the Mormon problem had ended and laws had been restored in Utah. The culmination of the Mormon problem, he claimed, would "afford some relief to the treasury at a time demanding from us the strictest economy" because they would be able to tax Mormons.[70] Some anti-polygamists held the view that dismantling the perceived monopoly of the economy of Utah would weaken Mormons' autonomy from the United States and, consequently, unravel the institution of polygamy.[71]

The first law to explicitly target polygamy was the 1862 Morrill Anti-Bigamy Act. By reining in polygamy, the act was a departure from the conventions of organizing territorial governments. Sponsored by Representative Justin Smith Morrill of Vermont, the act banned bigamy, the marriage of one person while already married to another. Additionally, religious institutions could not hold real estate worth more than fifty thousand dollars. Little debate preceded the passing of the Morrill Anti-Bigamy Act, as it had previously been debated when first introduced by Morrill during Buchanan's administration. Morrill compared Mormonism to Islam while debunking the rationale that the First Amendment protected polygamy, claiming: "Under the guise of religion, this people has established, and seek to maintain and perpetuate, a Mohammedan barbarism revolting to the civilized world."[72] These kinds of statements by white Protestants, published in Senate proceedings and medical reports, suggested that Mormonism both theologically and racially deviated from mainstream culture.[73]

Race factored into the Mormon debates not just in comparisons of Mormons to Muslims, or Mohammedans, but also in comparisons of polygamy to slavery. Congressmen disagreed on whether polygamy and slavery similarly obstructed state sovereignty and religious freedom. Southern slaveholders attempted to show the compatibility of slavery with Christian morality, while some Mormons claimed polygamy protected women from spinsterhood, prostitution, or inferior marriages.[74] President Lincoln consulted Thomas Jefferson's writings on religious freedom and *The Book of the Mormon* to assess the complexity of polygamy. He also consulted ex-Mormon John Hyde about the economic and emotional struggles of polygamous families.

Lincoln eventually signed the bill but did not enforce it. Abraham Lincoln, according to historian Richard S. Van Wagoner, wanted to destroy polygamy, not the Mormon people.[75] He

needed the cooperation of Mormons in Utah for the Civil War to, in particular, protect the telegraph and mail companies. The link between the Mormons and the telegraph was multifaceted. The Deseret Telegraph Line was the only documented major regional line to be built and run by a church.[76] Moreover, the Mormons promoted the economic welfare and preserved the cultural unity of their commonwealth through the telegraph.[77]

Lincoln responded to a Mormon journalist and missionary, Thomas Brown Holmes Stenhouse,[78] about this mutual cooperation in the context of clearing timber from a field: "Occasionally we would come to a log that had fallen down. It was too hard to split, too wet to burn, and too heavy to move, so we ploughed around it. That's what I intend to do with the Mormons. Tell Brigham Young that if he will let me alone, I will let him alone."[79] Lincoln allowed Brigham Young to ignore the Morrill Anti-Bigamy Act in exchange for the Mormons' cooperation in the war effort. Consequently, the act was largely ineffective.

As a result of these kinds of exchanges, Utah functioned as a buffer for the Mormons from tension with the moral establishment until after the Civil War.[80] After the Civil War, as legal historian Sarah Barringer Gordon has written, federally appointed officials actively complained to Washington about polygamy and the Saints' control of law and politics.[81] Lincoln's restraint from curtailing polygamy was a form of strategic governance. Federal policies carried out by states and localities supplemented what seemingly lack of federal constraint existed in the territories of the growing nation.[82]

In the twenty years following the passing of the 1862 Morrill Anti-Bigamy Act, only two Mormon polygamists were indicted, rendering the act largely ineffective during this time. In response to its ineffectiveness, the Territory of Utah legislature petitioned Congress in 1867 to

repeal the act. Congressmen interpreted this petition as an attempt to legitimize polygamy. When House Judiciary Committee investigated the matter, it revealed that judges in Utah were not enforcing the act.[83] Mormons would continue to control local courts in Utah until the early 1870s.

Despite this discovery of legal inefficacy, the federal government would not fully revamp the Morrill Anti-Bigamy Act until the 1882 Edmunds Act reinforced it. However, in the meantime, President Grant removed control of the Utah courts from territorial and federal judicial officers through the 1874 Poland Act, which was sponsored by Senator Luke P. Poland from Vermont. This act transferred jurisdiction over all cases in the Territory of Utah exclusively to the United States federal district courts, while revoking territorial judicial office positions held by Saints. The Poland Act also replaced the territorial marshal and attorney positions with United States Marshals and United States Attorneys. This shift in power in the Territory of Utah, in conjunction with the Edmunds Act, allowed for the upsurge in polygamy indictments in the 1880s.

The 1882 Edmunds Act, authored by Senator George F. Edmunds from Vermont and signed into law by President Chester Arthur, fined or imprisoned individuals found guilty of polygamy and unlawful cohabitation. Most significantly, the act removed the burden of needing to prove that multiple marriages actually occurred, which was crucial to the federal campaign against polygamy since so little written evidence of polygamy actually existed within Mormon communities. It also made it impossible for convicted polygamists to vote, participate in a jury, or hold public office. The number of polygamy convictions increased drastically in 1882. Four polygamists were convicted in 1884, followed by fifty-five in 1885, one hundred and thirty-two

in 1886, and two hundred and twenty in 1887. By the end of 1888, nearly six hundred Mormons had been fined or imprisoned.[84] Polygamists were increasingly convicted during these years because the Civil War was over, which removed the political protections that the Mormons had once possessed. The longterm objective of culturally remolding Utah reemerged as a viable possibility.

The 1882 Edmunds Act also established the Utah Commission, a five-person board that developed, administered, and enforced laws in the territory. Edmunds anticipated the Commission would only last a year, but it lasted for fourteen years until Utah became a state in 1896. The power of the Commission expanded with the Edmunds-Tucker Act of 1887, which transferred much of the property of The Church of Jesus Christ of Latter-day Saints to the United States federal government. Moreover, witnesses were forced to attend polygamy trials, while Mormons were blocked from voting, serving on juries, or holding public office until they signed oaths stating they abided to anti-polygamy laws. Women's suffrage in Utah was voided, and children born to plural marriages after a year of the act were disinherited. It was, finally, this commission that, as formally acknowledged in the Utah state archives today, secured funds to allow United States marshals and "spotters," or spies, to work together to locate "cohabs," or polygamist Mormons living in cohabitation.[85] With the new law as well as supervisory power of the Utah Commission, "federal judges in Utah launched the first sustained offensive against polygamists," while marshals chased "cohabs" across the territory.[86]

When the 1882 Edmunds Act was passed, James Wells Stillman, a lawyer and Rhode Island state legislator, spoke in Boston in defense of Mormon polygamy even though he himself was not a polygamist: "I will defend their right to believe and practice it, as firmly as I will

defend the right of one who believes in monogamy to adopt and practice that form of domestic life."[87] Stillman did not believe that polygamy was a moral issue, but rather a "question of taste or expediency."[88] He questioned how the Utah Commission collected information. The mission of the board was to determine who was a polygamist, but according to Stillman, such determinations were based on hearsay evidence or no evidence at all, "thus overriding this provision of the Constitution which guarantees every man the right of trial by jury."[89] His point is indicative of a larger problem of the system for monitoring the Mormons: credible evidence was hard to find.

The first version of Senator Edmunds's bill, prior to the 1882 Edmunds Act, had been "reported favorably to the Senate from the Judiciary Committee," and depicted an internal monitoring system in which the wives of charged polygamists would testify against their husbands "as to all matters except confidential communications made by him to her."[90] Charles William Bennett, who was likely the same non-Mormon Grand Master of the Wasatch Lodge, of the Grand Lodge of Ancient, Free, and Accepted Masons of Utah,[91] argued that monogamy should be protected. Yet, like Stillman, Bennett critiqued the evidence used against Mormons in court. He explained that legal enforcement should preserve the trust between husbands and wives, and between Mormons and the federal marshals: "In prosecuting polygamists our aim should be to conserve the sacredness of wedlock between one man and one woman—to protect monogamous households. […] The common—the sacred law of that household is that neither member shall be compelled to testify against the other, and thus introduce discord into that sacred precinct. But by this provision it is proposed to remove this protection, to invade that lawful home, which is the very thing we so much wish to protect. It is cruel because, deny it as

they may, lawful wives of polygamists are wronged heart-broken women."[92] Bennett, despite his defense of Mormon women, portrayed them as passive and ignorant: "They will tell you with all the religious enthusiasm, that they believe in polygamy, that it is their cross, which they must bear as the price of eternal exaltation. Could a woman's heart more emphatically proclaim that her woman's instincts were violated."[93] Mormon women spoke directly on polygamy when solicited as witnesses to their husbands' trials. Yet as noted, they actually benefitted from significant agency in their communities, despite their alternative marital roles. For instance, they assembled at great mass meetings to address the systemic oppression of their Mormon communities.[94]

The *Springfield Republican* newspaper editor and women's rights advocate, Samuel Bowles, referred to direct conversations with women about polygamy during his three thousand-mile journey west in 1865.[95] Through his interrogations, he was likely trying to draw out the connection between the concurrent women's rights, anti-slavery, and anti-polygamy movements. Bowles wrote, "Many, perhaps most of both sexes really believe in it as a religious duty; but I find this part of their religion much easier and more acceptable to the men than to the women. The former go to the sacrifice with a certain brutal joy; the latter with a hard, sad resignation."[96] According to Bowles, one Mormon woman claimed: "'Lord Jesus has laid a heavy trail upon me . . . but I mean to bear it for His sake, and for the glory He will grant me in His kingdom.'"[97] Ultimately, Bowles admitted, "we had little direct communication with the women of the Saints; but their testimony came to us in a hundred ways, sad, tragic, heart-rending."[98] One woman claimed, "with bated breath: 'Polygamy is tolerable enough for the men, but it is hell for the women.'"[99]

Mormon leaders, who were early targets of the federal investigations of polygamy, tried to evade arrest. Other Mormon leaders diligently defended their indicted community members. Prominent Mormon leaders started hiding in the Underground, a network of secret houses they built to avoid arrest. Church leaders slept in hay ricks, hid under floorboards, and conducted their business away from Salt Lake City. According to one polygamist's diary, Mormon leaders in the Underground developed a code to communicate with aboveground helpers about deputies and ongoing charges against their fellow Mormons. Federal prosecutors complained that since Mormons controlled the railroad and the Deseret Telegraph Company in the Territory of Utah, polygamists in hiding knew the prosecutors' moves in advance. For example, polygamist George Q. Cannon once escaped officials by jumping from a train traveling from Nevada to Utah. Fellow polygamist Lorenzo Snow was found hiding in a secret room below his living room floor.[100]

Prominent Mormons such as Cannon and Snow would hide for days at a time in Mormon houses and barns. Others even left the country, seeking asylum in Mexico, Canada, and Hawaii.[101] Mormon historians have observed that the daily affairs of the church were left to the non-polygamist majority, who communicated with Mormon leaders in the Underground through letters and nighttime visits, moving freely as intermediaries and guards of the hidden polygamists.[102] Mormon leaders' withdrawal to the Underground was a reference to pre-Civil War understandings of freedom and slavery.[103] The sociologist and grandson of Brigham Young, Kimball Young, has added that many polygamists used false names, disguises, and ruses while partaking in a "whole system of information gathering, signaling, and spotting informers."[104] Newspapers like the *Salt Lake Tribune* reported on the Underground system, surmising in an 1885 article that the Mormons had organized their own "Bureau of Information" intelligence

system through which they would "collect information and report the same to the church authorities touching on the prosecution of polygamists, and to enter the names of all informers on polygamists in a black book, to spot such grand jurors and witnesses as in any way aid in the prosecution of saints."[105]

In November 1885, United States Marshal Edwin Ireland wrote to the Attorney General in Washington that the Mormon counterintelligence system impeded arrest and convictions, warning people in advance about the presence of deputy marshals on trains, and instructing Mormon sheriffs and deputies to watch federal officers. Occasionally, first wives reported their husbands as revenge for marital conflicts, and neighbors volunteered as informants. To complicate matters further, local Mormon policemen, including town constables, marshals, or deputy marshals, sometimes double-crossed their colleagues and impeded the arrests of polygamists.[106]

The federal government switched its strategy in the second half of the 1880s, from targeting Mormon leaders who hid in the Underground to arresting any polygamist man, regardless of his status within the Church hierarchy. As a result, Mormons began lying or concealing certain truths. Some Mormon men lied about their relationships, frustrating federal officials who were stationed in the Territory of Utah. Mormon women at times also lied in court, or they were actively forgetful. These strategies did not necessarily relieve their husbands from punishment, but they did salvage many women, and by default their children, from dealing with the judicial rulings against polygamists. Women were, nonetheless, prosecuted for perjury.[107] The combination of Mormon leaders hiding in the Underground along with uncooperative witnesses coerced federal marshals to search for polygamy in more remote settlements of the territories.[108]

Non-elite Mormons, who did not have the economic freedom to abandon their public lives and hide, became primary targets. This system was slow, expensive, and often ineffective.

Moreover, it was hard to prove multiple marriages due to the lack of written or printed documentation of Mormon marriages. As a result, prosecutors rephrased the charge they used against Mormons from marriage to living situations. Instead of charging Mormons with polygamy, they charged them with unlawful cohabitation, the act of living with more than one woman. Officers gathered testimonial evidence that suggested Mormon men cohabited with more than one woman. By segregating the charge of polygamy into multiple offenses, they were able to increase the number of charges and expand the sentencing. Religious and legal scholar Catharine Cookson has succinctly summarized the process: "Prosecutors proposed, and courts adopted, clever practices and theories aimed at hastening 'justice' (i.e. convictions) and harshening penalties."[109] While this strategy was used to indict polygamist Lorenzo Snow, for instance, Mormon leaders eventually persuaded the Supreme Court in 1887 to stop dividing offenses into multiple ones.[110]

The frustration of federal officials and the courts in dealing with the Underground system reached anti-polygamists in Congress, who began to introduce harsher legislation. In the 1860 report to the House Judiciary Committee, congressman Thomas Nelson proclaimed that when the Founders crafted the free exercise of religion ideal, "they did not mean to dignify with the name of religion a tribe of Latter Day Saints disgracing that hallowed name, and wickedly imposing upon the credulity of mankind."[111] However, another congressman, Representative Thayer, predicted that passing the original anti-polygamy bill of 1860 that prohibited polygamy could provoke claims of civil rights abuses against Mormons: "[I]t would give the Mormons reason to

charge that we have made use of persecution against them, driving them to the mountains and hunting them like partridges, or that it would inevitably prolong the existence of the institution which it proposes to abolish."[112] As it became known that some Mormon women were not victims of polygamy but instead willing participators, anti-polygamists on the east coast became increasingly critical of Mormonism.[113]

Mormon men from Utah, Idaho, and Arizona assembled in 1885 to appeal for constitutional and religious liberty due to what they perceived as abusive treatment by federal officials.[114] Mormons were subjected to a variety of abuses, including the spotters who followed them around and peered through their windows; children who were questioned about their parents' marital relations; forced testimonies of families to commissioners and grand juries; Mormon women whose personal, sexual lives were exposed; and men who were bribed to work up cases against their neighbors. The writings of Mormon bishop John D. Lee, published after his death, corroborated the accounts that some Mormons suspected they were monitored: "When a Gentile came into town he was looked upon with suspicion, and most of the people considered every stranger a spy from the United States army."[115] Mormons responded with their own system of spying on officers and Mormon apostates: "They were not only on the track of officers, but all suspected characters who might come on to spy out what was going on."[116] Orson Ferguson Whitney, a historian, politician, and member of the governing Mormon body, the Quorum of Twelve Apostles, proclaimed in an address at the mass meeting that Mormons accused of polygamy were guilty until they proved themselves innocent.[117] Whitney's previous experiences of reporting and editing for Utah's oldest daily newspaper, the *Deseret News,* suggested he likely

understood the power of effective communication through mass media. His proclamation to the President of the United States was a late and unsuccessful attempt to save polygamy.

Polygamy formally disappeared from the United States in 1890. The Mormon Church, by this point, could not conduct its affairs with most of its leaders disenfranchised, imprisoned, or in hiding. On September 25, 1890, the President of the Mormon Church, Wilford Woodruff, issued a Manifesto declaring that the Mormon Church had stopped teaching polygamy and prohibited its practice among its members.[118]

With the legislative support of the 1882 Edmunds Act and its subsequent revised form, the 1887 Edmunds-Tucker Act, federal judges and justices collaborated in a systemic campaign against polygamy. More than twelve thousand Mormons in the Territory of Utah were disenfranchised as a result of the Edmunds-Tucker Act, including those who practiced polygamy, those who refused to swear against polygamy, and all Mormon women. Government officials had to balance religious tolerance with their information gathering practices. Congressmen and Supreme Court justices made a concerted effort to treat the Mormons fairly in the midst of a monumental legal decision, but ultimately, polygamy was considered irreconcilable with American society.

**III. Spotting and Securing the Nation**

The Mormon family structure challenged the separation of female public and private spheres in American culture, since Mormon women occupied distinctive maternal roles.[119] The demands placed on Mormon husbands to embark on church missions or attend to other families elevated wives to leadership positions. Within the network of Latter-day Saints auxiliary organizations, women had more opportunities to assume leadership roles in public spaces.[120] Yet

federal concern about the Mormons focused less on the contentiousness of Mormon marital norms than on the possibility of Mormon citizenship. The long retreat of the Church of Latter-day Saints from polygamy, as well as from economic and political autonomy, has been characterized by historian Gustive Larson as the "Americanization of Utah."[121] Preparing Utah and its inhabitants for statehood was the underlying concern about Mormon polygamy.

Mormons and United States marshals, who were responsible for daily law enforcement in the territories and often the officials who collected information on polygamists, became increasingly distrustful of one another by the late 1860s. Federal officers traveled to Camp Douglas, a military garrison that protected the mail route and telegraph lines of the Overland Mail Route, numbering as high as five thousand soldiers.[122] The *New York Herald* reported from Salt Lake City that the reinforcement of federal troops assumed a "warlike aspect," and that there was "certainly a great deal of bad feeling exhibited and no end of inflammatory talk and threats," suggesting an unfavorable ending for Utah interests.[123] In his final annual message to Congress on December 7, 1875, President Ulysses S. Grant presented the following recommendation about the Mormons, or the "scandalous condition of affairs existing in the Territory of Utah," for which he reprimanded Congress. President Grant had previously asked for legislation to combat the "licensed immorality" of polygamy, even though no United States law permitted polygamy either: "That polygamy should exist in a free, enlightened, and Christian country, without the power to punish so flagrant a crime against decency and morality, seems preposterous. True, there is no law to sustain this unnatural vice, but what is needed is a law to punish it as a crime, and at the same time to fix the status of the innocent children–the offspring of the system, and of the possibly innocent plural wives; but, as an institution, polygamy should be banished from the

land, while this is being done."[124] Grant framed polygamy as an institution that enslaved Mormon women to lifestyles that subjected them to dishonorable relationships with men. His proposal for legislation to outlaw polygamy would have directly and quickly addressed the Mormon practice, or "unnatural vice," but the campaign against polygamy assumed the form of a long, nuanced battle occurring in the territories, the courts, Congress, and printed media. Notably, the call for systematic law to curtail polygamy emerged right before the polygamy cases reached the United States Supreme Court. President Grant promised to request in his annual message that Congress "drive out licensed immorality, such as polygamy and the importation of women for illegitimate purposes."[125]

At an 1885 Mormon general conference, one speaker, Mr. Whitney, alluded to explicit monitoring of Mormons in the Utah, Idaho, and Arizona territories: "Spotters and spies dog their footsteps. Delators [informers] thrust themselves into bedchambers and watch at windows. […] Attempts are made to bribe men to work up cases against their neighbors. Notoriously disreputable characters are employed to spy into men's family relations."[126] He alleged that marshals employed "spies and spotters" who questioned children on the streets, and concluded that such monitoring affected innocent and guilty citizens alike, disturbing businesses, neighborhoods, and personal properties.[127]

There were other avenues through which the federal government monitored the Mormons. The 1884 "Special Report of the Utah Commission" indicated that government officials also considered statistical data when evaluating the Mormon threat, and that the Utah Commission was a third source for monitoring the Mormons.[128] When the Board of the Utah Commission first started registering people for Utah elections in 1882, polygamists held the

majority of offices in Utah. Part of the mission of the Utah Commission was to take control of governance in the territory. None of the thirteen hundred and fifty-one elected officers in the territory were polygamists after the establishment of the Commission. The "Special Report" estimated that Utah consisted of twelve thousand non-polygamist male and female Mormons whose voting rights were not revoked.[129]

The "Special Report" further indicated that government officials were monitoring how Mormons responded to the Edmunds Act in diatribes against the law in newspapers and at religious gatherings, while Mormon leaders advocated for polygamy in speeches in Salt Lake City. The Utah Commission recorded how Mormons mobilized for religious and political gatherings: "All were invited [to the speeches] by public notices in the newspapers, and the meetings were largely attended. . . . [T]he discrimination of the act of Congress in favor of non-polygamous Mormons is producing such results upon the masses as to alarm their leading men."[130] The Commission also predicted the future of polygamy in Utah, implying it was actively monitoring activities throughout the Territory: "[W]e are of the opinion that in the more rural districts, chiefly in the southern part of the Territory, there has not been much decrease [in polygamy], while in Salt Lake County and other counties where there are considerable cities and towns there has been a decided decrease."[131] They likely conjured these estimates and predictions through gathering information for the census: "The present population is estimated at 160,000, about four-fifths being Mormons. The people are generally engaged in agricultural pursuits."[132]

The census data included not just how many Mormons there were, but what proportion of jailed and arrested people were Mormon.[133] Such data was collected on all inhabitants of the

United States. But paradoxically, data collected for the census revealed that Mormon arrests fell in the minority of total arrests in the Territory of Utah: "[W]e find the vastly preponderating number of Mormons contributing but one-eighth of the cases recorded, and the non-Mormons seven-eighths!"[134] A journalist for the *Chicago Times* reported on this data. He defended the morality of the Mormons after visiting Salt Lake City in early 1884: "If those practicing polygamy are, as a class, actuated by the licentious motives with which they are charged, why is it that the affiliated crimes of prostitution, brothel-keeping, lewd conduct, insulting women, exposing person, attempting rape, and obscene and profane language . . . are so nearly monopolized by the non-Mormon element?"[135] The efforts of United States marshals, spotters, and the Utah Commission through physical and statistical monitoring constituted the broader campaign to prepare Utah for statehood. Federal concern extended to the economic and education sectors of the Territory of Utah, both of which functioned as additional lenses through which the federal government monitored the Mormons.

The "Special Report" of the Commission suggested that non-Mormon schools and churches molded Mormons into good citizens by pushing "the obnoxious features of 'Mormonism' in a condition of gradual declension and final extinction."[136] Henry Randall Wait, the Statistician of the Tenth United States Census, accused the Mormons of constructing a public education system that dissuaded non-Mormons from becoming teachers, and that the textbooks provided religious instruction in a secular system.[137] The efficacy of the public school system in the Territory of Utah denoted the larger concern of the federal government about sovereignty and cultural uniformity. However, the illiteracy average in the Territory of Utah in 1880 was less than the national average.[138]

Some non-Mormon businessmen in Utah complained of the "clannishness of the Mormons in trading with each other rather than the Gentiles,[139] indicating that the economy needed to be examined. Many Mormon industries were profitable, increasing the anger of non-Mormon businessmen who were excluded from those networks. An 1886 pamphlet authored by Dyer D. Lum, an American labor activist and anarchist,[140] questioned what he perceived as Mormon control of cheap labor in Utah, driven by an "antagonistic system of social and commercial activity."[141] For Lum, economics, and not polygamy, was the core problem of the Mormons.[142]

Polygamy instigated domestic unrest within a nation seeking to establish its authority on the global scale. Questions about the Mormons, such as their willingness to contribute to the national economy, augmented this concern up until Utah was granted statehood in 1896. The 1890s, historian William O. Walker III has written, was a time of "passionate conflict about what it meant to be an American and the critical importance of basic values to the conduct of public affairs."[143] Historian Gary Gerstle has traced the buildup of military and surveillance power in the United States to the earliest days of the republic. Government monitoring increased throughout the nineteenth century in correlation with the federal government increasingly regulating various sectors of American society.[144] The states complied because they prioritized the public good over private rights,[145] a concession that resonates with surveillance in the contemporary United States. In pre-1860 municipal and state laws, those most frequently monitored in the states were single women living outside of patriarchal families, poor people, blacks, migrants, and immigrants. Mormons living outside of traditional families complemented this framework, exposing their families to government "spotters" seeking out "cohabs."[146]

## IV. The Path to Statehood

This section will examine the path to statehood from 1870 to 1896, with a focus on the legal discussions about the polygamy convictions in six United States Supreme Court cases, in which the central premise related to polygamy and the means of collecting information. This section also includes a selection of other documents presented to Congress and to the Mormon community in this time period that complement the legal debates. The purpose of examining how information about polygamists fared in court is to show whether the justices considered the monitoring practices valid and legal, as well as to what extent the justices attempted to understand Mormonism as a religion. The following two chapters on the AFSC Quakers and Brooklyn Muslims are also structured around how and when monitoring agents considered the religion of the surveilled group, as well as to what extent the legality of the monitoring systems was challenged once the government monitoring systems were publicly revealed. I suggest that the rulings in the Supreme Court were critical to monitoring the Mormons.

From 1870 until 1890, when the Church of Latter-day Saints formally abandoned polygamy, conflict between Mormons and non-Mormons intensified. As sociologist and grandson of Brigham Young, Kimball Young, characterized the period, "What had started out as a local and somewhat tangential issue had become a central problem for the entire American public. This whole period provides an excellent illustration of the interplay of the public sentiment and judicial action."[147] In this period, the judiciary increased its role in the campaign against polygamy, propelling Utah forward to statehood. The federal government prosecuted Mormons in about twenty-five hundred cases from 1871 to 1896, mostly polygamy cases.[148]

Some of the defendants in these cases appealed to territorial Supreme Courts, including the Utah Supreme Court.

In 1871, journalist and novelist George Alfred Townsend, known for his war correspondence covering the Civil War, implored William Henry Hooper, a Mormon convert and United States Congressional delegate from the Territory of Utah, to eradicate polygamy from Hooper's Mormon communities in Utah: "Be rid of polygamy, cast out by this course the Federal officials who prey upon you, and become an American State in good faith, represented among us, and blessed by neighborhood rule."[149]

Hooper had delivered a plea for religious liberty to the House of Representatives one year prior, asking lawmakers to investigate polygamy as a theological issue.[150] He compared the Mormon justification for polygamy to stances on marriage held by people of other religious denominations. Emphasizing the centrality of mainstream Christianity to American culture and how Mormonism was considered to be far left of that Christian center, Hooper argued that Mormonism and Christianity could coincide: "[B]y numerous leading writers of the Christian church, the doctrine of polygamy is justified and approved." He argued that since the Catholic Church and some Christian churches, "among the most powerful in numbers," would agree that marriage is a sacrament rather than a civil contract, the Mormon polygamist stance on marriage should similarly be respected.[151] Hooper, however, erred in this argument since Protestants would not have considered marriage a sacrament.[152] Mormon historian Davis Bitton has written that Mormons to this day are not part of mainstream Christianity, but do identify as Christian since they believe in the resurrection and atonement of Jesus Christ.[153] However, to preserve

polygamy, it was important for advocates of polygamy to align Mormonism with the Christian center, and not just Christianity more broadly.

Hooper insisted that polygamy was a religious belief after mentioning that Mormon civil society existed because of sanctions internal to the community: "Now, sir, far be it from me to undertake to teach this learned House, and above all, the Hon. Chairman of the Committee on Territories, great theological truths. If there be any subject with which this honorable body is especially conversant, it is theology."[154] Hooper's attempt to align Mormon theology with Christianity was part of a strategy to salvage polygamy as a religious liberty. He reinforced this point at the end of his plea: "That in considering the cognizance of the marriage relation as within the province of church regulations, we are practically in accord with all other Christian denominations."[155] The Mormon justification of practicing polygamy since it was a religious belief was not seriously considered in Congress. A speaker in Congress averred that Mormons were never called before the Committee on the Territories to represent themselves in the defense of polygamy.[156]

Mormons' efforts to claim polygamy as a religious belief failed most concretely in the United States Supreme Court cases related to polygamy that would begin one year later. Ninety-five percent of the twenty-five hundred federal trials of Mormons centered on sexual crimes, which were mainly crimes of polygamy. A portion of these sexual crimes included fornication and unlawful cohabitation, crimes which eventually became the legal focus in the federal campaign to suppress polygamy. The volume of prosecutions pertaining to sexual offense was, according to legal historian Sarah Gordon, "literally, unique in American legal history."[157] During this period, otherwise known as "the Raid," Mormon leaders and ordinary folks alike

were “hunted as common criminals, separated from families and from freedom itself,”[158] a history that is remembered well by the Mormon Church today.

The court records from trials that did not reach the United States Supreme Court, according to Gordon, are oblique, but often they included appeals for mercy from the courts, “evidence of the devastation wrought by the legal reconstruction of society.”[159] Records from the trials generally contained a complaint, an arrest warrant, a bail record, and an indictment including the names and residences of the wives and the witnesses for the government. Some court clerks would write the results of the prosecutions on the back of the indictments. Other records included testimonies of witnesses, about half of which documented the results of the trials. There are, of course, limits to focusing on those polygamy cases that reached the United States Supreme Court in a study of monitoring Mormon polygamy since, as noted in section three, monitoring also occurred in indirect ways, such as by examining the illiteracy average in the territories. But given the elusive nature in which federal marshals and other officers collected information, it was necessary to narrow the analysis to evidence that was documented in a courtroom as having been used by the federal government to prosecute polygamists, and then supplement the analysis with additional sources referencing the spotters and spies who permeated Mormon networks.

Even more, it was necessary to narrow the focus on only those Supreme Court cases that addressed how information was collected in order to consider at what point government officials, if at all, examined the meaning of the Mormon religion during these practices, and if that examination shaped whether they believed their monitoring practices were legitimate. Since the

lower court discussions are often cited in the higher court transcripts and documents, focusing on even just these selected cases provided more than enough material for this chapter.

That being said, a few of the smaller polygamy trials or trials that reached the Utah Supreme Court are worth highlighting briefly. A man by the name of Thomas Hawkins was brought to trial for committing adultery against one wife, Elizabeth Mears, based on a complaint from his other wife, Harriet Hawkins. The trial record showed that monitoring of Mormon communities occurred in order to identify polygamists, since Harriet's private complaint was the basis from which the accusation was launched. The trial also showed that not all Mormon women were unanimous in their opinions about engaging in polygamous relationships: "I have told him [my husband] that it was a damned bad trick, and that I did not believe in any such damned doctrine."[160] The trial, finally, investigated whether marriage was a civil or ecclesiastical rite in Utah. The Mormon defense posited that marriage was ecclesiastical since polygamy was established prior to the formation of American government in Utah.

In 1874, the legality of polygamy in the Territory of Utah was unclear to the justices of the Utah Supreme Court. In one case, Edward Friel appealed a judgment from the lower court, but not about whether he was a polygamist. Friel appealed the denial of the trial court to use his plural wife as a witness in his case, in which he was trying to recover payment on a promissory note from the defendant. The territorial statute excluded wives from testifying for or against their husbands unless the action occurred exclusively between them. One justice noted in his dissenting opinion that the implication of the final decision, which denied the plural wife the right to testify, was that she was in fact his wife and therefore part of a lawful, polygamous marriage. While the Utah statute neither voided nor endorsed legal polygamy, the judge noted

that the decision should have excluded only lawful husbands or wives from testimony in order to sustain the illegality of polygamy.[161]

The details of this case in the Territory of Utah Supreme Court provided a few important insights about governmental perception of polygamy leading up to the United States Supreme Court appeals. The first insight was that Mormons were not hiding their polygamous relationships. The second point was that the judges of the Utah Supreme Court, though not advocating polygamy, understood there were contradictions in their decisions that complicated the argument for monogamy in Utah. They required legal assistance from the United States Supreme Court.

Mormons in twelve polygamy cases appealed to the Supreme Court of the United States in the nineteenth century.[162] The Mormons' inclination that they might win at the national level when they lost so many cases at the territorial level might be explained by their ample claims, including those articulated in the Supreme Court, that the jury selections for polygamy cases were rigged, and therefore the territorial justice system was corrupt. This chapter will thematically explore six of these cases, some more thoroughly than others, based on their unique contributions to the monitoring system of polygamy in the mid-nineteenth century. These cases were significant because they initiated the legal distinction between religious belief and action, effectively establishing that religious interests could not "be extended to make the professed doctrines [of any faith] superior to the law of the land and in effect permit every citizen to become a law unto himself."[163] This meant, in other words, that no religion could be privileged over another in the court of law. During this period, the Gilded Age, political institutions and in particular the Supreme Court of the United States "made a self-conscious and, ultimately,

unsuccessful effort to establish strict boundaries between the public and private spheres."[164] While Utah would eventually pass through these trials in the Supreme Court and onto statehood, national policy in the territories influenced the nature of citizenship in the rest of the country,[165] helping to explain why the government was so concerned about what occurred inside the private homes of Mormons in the Territory of Utah.

**A. Belief Cannot Excuse Crime**

*Reynolds v. United States* (1878) was the first of the polygamy cases that reached the United States Supreme Court. *Reynolds* was previously an indictment in the District Court for the third judicial district of the Territory of Utah, and then an appeal in the Utah Supreme Court. Mormon leaders encouraged George Reynolds, a simple man with two wives, to appeal his case to the Supreme Court as a challenge the Morrill Anti-Bigamy Act.[166] The Mormons, testing their case for polygamy in *Reynolds*, believed the act violated the First Amendment. The ruling, however, ended their claim that polygamy was a form of religious expression. The Mormons would have to utilize alternative legal arguments in subsequent cases. The Court reinforced the evangelical claim that plural marriage could not be protected because it was irreligion, "opinions contrary to the nature of religion,"[167] quoting Robert Baird, the Presbyterian missionary and author who provided some of the most comprehensive histories of major Protestant denominations of the nineteenth century.[168] Baird's tautologous definition indicated how even the language of the Supreme Court at this time was rooted in Protestant Christianity. Arguing against the common narrative that the *Reynolds* decision was a secular opinion, historian David Sehat has argued the Court embraced a secular rationale while sustaining Protestant control over the definitions of social order.[169]

In the original trial, the judge instructed the jury to determine whether or not the evidence proved that Reynolds had married more than one woman. Reynolds explained that the dual marriage was part of his religious obligations. Nonetheless, the judge encouraged the jury to consider the women and children who were involved. George Reynolds, who pled not guilty of bigamy, was the personal secretary to Brigham Young. He was indicted in October 1874 and convicted after first being relieved of one conviction in the Utah Supreme Court in June 1875. Acknowledging he was polygamous in his case in the Utah Supreme Court, he instead appealed on the argument that the district court unlawfully and incorrectly drew the grand jury for his trial. The Utah Supreme Court upheld the decision of the district court to reject jurors who refused to answer whether they were "living in polygamy," as it did not see fault with removing such partial jurors from the jury. It also maintained the decision of the lower court that religious convictions could not excuse crime: "On the trial of Defendant for the crime of Polygamy [sic], evidence was offered to him to show that polygamous marriage was a part of his religion; *held*, such evidence not admissible and has no foundation for its admission in either justice, reason or law."[170]

Reynolds appealed to the United States Supreme Court. His defense team argued that the indictment was found by an illegal grand jury of fifteen people, rather than the legally required size of sixteen people. What is interesting in this case, and what we will keep in mind for each of the polygamy cases, is how information was collected both to indict and to convict Reynolds. The deputy marshal, referred to as Pratt, did not recall informing Reynolds about the nature of his business at Reynolds's private home. Pratt was in fact searching for one of Reynold's two wives, Mary Jane Tuddenham, to establish evidence that Reynolds was a polygamist.[171] The next day, Pratt, who held the subpoena for the second wife, Amelia Jane Schofield, spoke to Mary

Jane Tuddenham at the Reynolds residence. There was no sight of Amelia Jane in the residence during this encounter, but Pratt claimed he found Amelia Jane there before, "at the same place."[172] Pratt could not remember Mr. Reynolds's exact words when returning to the house without a search warrant to find Amelia Jane. Despite the various holes in Pratt's narrative, he was able to arrest Reynolds and initiate the trial process. Additionally, despite Reynolds's objection, the district court in Utah had allowed Amelia Jane's testimony from a different trial against Reynolds to be used in the most current trial, thereby questioning the ethics and legality of court procedures in the Territory of Utah. Amelia Jane Schofield was not in court to prove the second marriage, but the district attorney claimed her testimony was usable because she had been kept away from court by George Reynolds. The district attorney offered no proof to sustain this claim.[173]

Questionable evidence also surfaced in a discussion centered on whether the original copy of the notice indicating the time and place for drawing jurors for Reynolds's case was presented in court. A. K. Smith, on behalf of the United States, testified that he had "seen the original notice, in the judge's own handwriting, and, being asked by the district attorney if he knew this to be a copy of that original, answered, 'I do not, but that an order of that kind was made—was written out—from which this was made, I know.'"[174] This tenuous description of events mirrored the similarly weak testimony of Pratt arresting Reynolds.

The Court in *Reynolds* conceded that polygamy was a religious obligation. But Reynolds did not triumph with the right to practice polygamy. The Court, drawing from the writings of Thomas Jefferson, reconciled this paradox they encountered by defining religion based on its use in the First Amendment rather than on a general understanding of free exercise. By citing

Thomas Jefferson's 1802 letter to the Danbury Baptist Association, in which he had written that man had "no natural right in opposition to his social duties," the Court deduced that while it could not make judgments based on an opinion from a letter, it could judge actions deemed subversive to the common good.[175] In short, obligations to society trumped individual, moral beliefs.[176] The Constitution protected individual beliefs, but it did not protect criminal activities sanctioned by individual beliefs.[177] Chief Justice Morrison R. Waite summarized the core of the decision in the following sentence: "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices."[178] The *Reynolds* decision also revived the Morrill Anti-Bigamy Act, which the federal government had not yet begun to enforce, to strengthen polygamy prosecutions. By invoking the tenets of the Morrill Anti-Bigamy Act, *Reynolds* not only undermined the Mormon case for polygamy by distinguishing belief from action, but it also revived the legislative campaign against polygamy.

More broadly, *Reynolds* highlighted federal control over Mormon culture and family structure, offering definitive judicial action on the Mormon question. The crucial distinction between religious belief and action proved necessary to protect the majority from the potentially dangerous actions of polygamists. The Court articulated an operative framework for determining when to protect religious expression.

While legal historians generally agree on the distinction between religious belief and action in *Reynolds*, other scholars have critiqued the implications of the decision. Catharine Cookson has argued that the Supreme Court in *Reynolds* lost sight of its constitutional obligation to protect the minority from the desires of the majority.[179] The opinion, Sarah Gordon has added, bolstered monogamy as a pillar of democracy in the eyes of congressmen, lobbyists, journalists,

and civilians.[180] Mormon historian J. Spencer Fluhman has suggested the opinion simply avoided the question of whether polygamy was religious "by asserting that government could suppress acts, religious or not, that stood in the way of civilization's progress,"[181] but was nonetheless a monumental legal decision that accepted Mormonism as a religion by acknowledging polygamy as a religious belief.[182] In other words, the United States Supreme Court understood that polygamy was part of Mormon religion, but maintained that polygamists did not have the right to practice that belief.[183]

The Court did not reach the decision lightly. It worried that protecting the religiously motivated conduct of polygamy would result in having to protect each and every action allegedly motivated by religion, such as human sacrifices in Hinduism. Journalists drew comparisons between Mormons and unfamiliar foreign cultures, including Islam, Buddhism, and Hinduism, in determining how to define the Mormon religion as one that was true, false, or some other indistinct category.[184] Journalists' alignment of Mormonism with non-Christian religions strategically framed the Mormons as outside of the Protestant establishment, to quote E. Digby Baltzell,[185] which he defines as holding tradition and authority without being coercive or authoritarian, dominated by members of the upper-class while constantly refreshed by new members of the elite class.[186]

The justices were not without cultural prejudice, either.[187] They pondered over the relationship between Mormonism and race, analogizing the Mormons to "the Asiatic and . . . African peoples,"[188] whom they associated with sexual immorality and anti-democratic laziness. Mormons, though white, were categorized as outsiders not only religiously, but also racially. This strategic aligning of purity and whiteness symbolized the greater campaign against the Mormons

in the legislative and judicial branches. Fluhman has demonstrated that the shift in Mormon criticism, from focusing on polygamy to foreignness, coincided with the conclusion of the Civil War: "'Celestial marriage' moved Mormonism further from the discursive middle, but the new antagonisms' aggressive exoticism ultimately hijacked anti-Mormonism. Most postbellum critics esteemed polygamy as the undeniable marker of Mormonism's fakery or Oriental foreignness. What real religion could recommend something so utterly outside nineteenth-century norms?"[189] It follows that, while anti-polygamy arguments drew from the antislavery sentiment that shaped post-Civil War America, a desire for national cohesiveness undergirded the *Reynolds* decision, driving an American-born religion not only from the white Christian center, but outside of the geographic and identity-based boundaries of the nation. Polygamy that was previously associated with primitive cultures in Asia and Africa was far less disconcerting to Americans than polygamy practiced in their own territories. American polygamy threatened monogamy, democracy, and the social order.[190] The *Reynolds* decision consequently surpassed theological and national categorization of what was and was not acceptable.

After the decision was released, members of the public developed their own opinions on *Reynolds.* An Indiana-based Mormon farmer and businessman, J. Horatio Nichols, penned a letter to Congress that commented on the opinion. He lamented: "Judging from items in newspapers and somewhat irritating articles in religious journals, one might at first glance infer that the whole nation was inflamed, with good reason, against the Mormons. But closer observation has led me to think that the excitement is a manufactured one; kindled and kept alive in the cities and larger towns, mostly by ministers, priests, and zealous members of sectarian churches."[191] Whether Nichols's argument was considered persuasive is uncertain, but his

testimony of religious figures publicly opposing the Mormons was substantiated in other publications. The disapproval of Mormonism by leading Protestant clergymen, in effect, contributed to the governmental system of monitoring the Mormons by shaping public opinion and, indirectly, preventing citizens from protesting against that system. Nichols elaborated that "within the last few weeks, the persistent, universal, and vigorous efforts of ministers, priests, and church-people, to instigate persecution . . . against the Mormons and polygamy" occurred.[192] As leaders of various Christian denominations preached against the immorality of polygamy, he wanted to debunk the alleged evilness "charged upon it by zealous ministers of Christian sects."[193] Outsiders, according to Nichols, were welcome to visit the Mormon communities and form their own opinions, since the Mormons did not attempt to shield their lives from outsiders: "[M]any intelligent and unprejudiced persons who have visited and dwelt among the Mormons, for the special purpose of observing their social and religious institutions, their morals, industries, habits, and manner of life, have published the results of their observations, and their testimony is before the world."[194]

One such outside observer, Captain John Codman, in a small volume called "The Mormon Country," attested to having not met as honest and industrious of a community as the Mormons. Nonetheless, despite the fact that outsiders visited Mormon communities and produced relatively favorable reviews in texts and oral stories, Nichols emphasized that Mormon biases prevailed: "It may not be to my taste, nor to your taste: but we are not parties to it; our tastes ought not to control other independent persons' marriages preferences. It certainly is against our prejudices. But prejudices are subtle enemies."[195] Not only did biases prevail, but the

lasting effect of the *Reynolds* decision would prove too important to the relatively inconsequential opinions of Nichols or Codman.

Nichols, nonetheless, declared in a letter to Congress that *Reynolds* was not only relevant to Mormons, but to "the American, the human right of all men to the free exercise of religion."[196] How the Court defined religion in *Reynolds*, and its impact on all Americans, was the unspoken legacy of the decision, since freedom of religious belief was preserved, but it was not certain how religion itself would be assessed. Nichols saw the decision as a "subtle and enormous absorption of undelegated [sic] power."[197] He interpreted the Supreme Court's justification for restricting religious freedom as problematic: "Not less unconstitutional and indefensible is the Supreme Court's selection of the words 'good order,' as a criterion of the legislative power of Congress over the actions and *natural rights* of the people," since, he continued, it was evident that good order did in fact exist among the Mormons.[198] Nichols inferred that public opinion affected the legal fate of the Mormons: "Whether a matter or an institution is odious or not odious, is a question of taste, and not of *natural rights*."[199] More accurately, Nichols may have added that whether or not an institution was religious or not, and accordingly protected from unwarranted monitoring or intrusion, was dependent on its congruence with the mainstream Protestant culture of the nation.

**B. Conversation as Evidence**

Following the momentous *Reynolds* decision and defeat to the Mormons' plan, *Miles v. United States* (1880) also examined a polygamy indictment.[200] In the Utah Supreme Court, John Miles appealed his district court conviction of marriage to both Emily Spencer and Caroline Owens. Miles argued that the district court had allowed the United States attorney to ask jurors if

they believed in polygamy or belonged to the Mormon Church, and if Miles belonged to the Church. Miles objected to the attorney interrogating the religious beliefs of the jurors.[201] In *Miles*, the jury selection process was the site of government monitoring of polygamy. Jurors were asked by the United States District Attorney, Philip T. Zile, whether they were a member of the Mormon Church, and about their beliefs within the Church, including: "Do you believe in its doctrines and ordinances?"; "How long have you been a member of that church?"; "Do you believe that he [Joseph Smith] received a revelation concerning plural marriages?"; "Do you believe that the revelation received by Joseph Smith was from God?"[202]

Zile interrogated the religious beliefs of the jurors to dismiss all polygamists from the case.[203] He also asked John Taylor, then president of the Mormon Church, whether certain ordinances of the church were printed or written, to which Taylor replied they were not. Zile continued: "Why, don't you know, as president of the church, whether certain ordinances of the church are printed or written?"[204] This exchange indicated that the government did not know whether ordinances existed, meaning the government was unable to rely on textual evidence to examine the religiously-motivated actions of the jury members and Miles.

The district court opinion suggested that Zile was wrong to ask the jurors if they believed in polygamy. While agreeing that polygamist jurors were biased in convicting polygamist, it criticized the manner in which that information was collected from the remaining jurors, who had already passed the bias test: "But all of the jurors to whom these questions were asked, and who were excluded, were in the first place challenged for actual bias and the challenge submitted to triers appointed by the court. These triers in each instance found the challenge true, and their decision was final. These questions therefore were not material or important."[205] Exploring the

question of how to build a fair jury in *Reynolds*, Justice Boreman of the Utah Supreme Court responded that, while selecting a jury was not an overt form of monitoring in which federal marshals watched Mormons walk in and out of homes, the jury selection process allowed the federal government to detect new polygamists in the jury selection process and to remove sympathy for polygamy among the juries. He asserted it was right to dismiss jurors who believed in polygamy since they would be reticent to convict polygamists.

Nonetheless, Justice Boreman included in his opinion an explanation of Mormon theology. The opinion was noteworthy because it indicated the justice explored the theological underpinnings of polygamy. Justice Boreman first explained that he did not see any problem with appointing new jurors when the polygamist ones were dismissed for bias. He added that the divine appointment of polygamy was one of the leading doctrines of the Mormon Church: "It is likewise one of the cardinal teachings of the church that as it is God's law it is above man's law, and that when the practice comes in conflict with the laws of the land, the law of the church must be obeyed, and the law of the land disobeyed."[206] Following *Reynolds*, this statement validated the Mormon religion, however far askew from the Protestant culture it veered.

Government monitoring also occurred in *Miles* through the use of citizen witnesses, largely by asking witnesses whether Miles and his two wives were seen in the same place at the same time. One such interrogation asked the witness about a conversation between Miles and one wife at a wedding.[207] Judge Hagan raised the issue of whether the interrogation was relevant to proving bigamy in the case, based on the assumption that any revelation from such a conversation would be irrelevant in proving a dual marriage: "We object. In the first place, on the grounds that we suppose the object of this is to prove the marriage with Emily Spencer. We

object to it as being incompetent and insufficient to prove a marriage in any event, and the admission of the defendant cannot be received to prove such a marriage, and are irrelevant and immaterial."[208] Nonetheless, the objection was overruled, and the discussion continued. The witness explained that Miles had asked Caroline Owens to play the piano, to which she had refused by saying she would not play for Miles's wife, Emily Spencer. Judge Hagan attempted to extract a more precise statement from the witnesses who incriminated Miles by admitting both women were his wives: "Didn't he say to Miss Owens in answer to that, 'Well, you are my wife too'?"[209] Another witness recounted a dispute between the two wives: "He says, 'No you won't, she is my wife.' Then [sic] turned to the lady on the stool, and says, 'Sit right where you are, you are my wife.'"[210] Witnesses continued to provide evidence from alleged exchanges with John Miles in this manner.

Caroline Owens, the second wife, also served as a witness.[211] The defense objected to her testimony on the grounds that the first marriage to Emily Spencer had not yet been proven. The Court overruled the defense's objection but intervened by asking the jury to determine what evidence could in fact be used to prove a polygamous marriage. The Court asserted that the jury needed to weigh in on whether Emily Spencer was effectively proven to be his first wife.

When Caroline Owens took the stand, she narrated the beginning of her relationship with Miles. She was aware he had already married Emily Spencer, but he assured her he would leave Emily.[212] Owens insisted that, after realizing there was a chance Miles would enter into a polygamous relationship with both herself and Emily, she tried to become the primary wife. Owens testified that Miles eventually married her first, and then married Emily Spencer. Owens published a letter expressing her frustrations with the situation in the *Salt Lake Herald*, which

was subsequently presented to court as evidence.[213] The information used to convict Miles, in summary, came from informants and witnesses to conversations; Miles's first wife, Emily; and Caroline Owens, along with her published newspaper article.

In the Utah Supreme Court appeal, Justice Boreman attested to the difficulty of collecting marriage information in the Endowment House in Utah, where Mormon marriages were performed. The absence of physical Mormon marriage records inadvertently coerced government officials to rely on citizen witnesses' testimonies, such as those described above, and questionable jury selection processes to monitor and control Mormon polygamy. Justice Boreman commented: "All marriages in the endowment house, as shown by the testimony, are clandestine and performed under cover of sworn secrecy. Direct testimony is therefore extremely difficult to access, and hence every fact going to show the object of the party's visit becomes material."[214] Justice Boreman was justifying the questions posed to Caroline Owens about her dress in the Endowment House, as he believed the questions were necessary to determine whether or not Caroline Owens was present in the house to be married: "If she were not dressed in the mode required, the presumption would be that she was not there for the purpose of marriage."[215]

Ultimately, what the Utah Supreme Court had set out to determine was whether Miles and Emily Spencer were ever married, and if that was the case, whether that marriage occurred before the marriage between Miles and Caroline Owens. Boreman argued that proving the existence of the first marriage, between Miles and Owens, could be inferred from Miles's oral confessions, particularly given the absence of tangible marriage records. A final point of contention in the collection of evidence in *Miles* centered on whether Caroline's surname was

'Owen" or "Owens." The following excerpt from Boreman documented the challenge that judges and justices would have faced in determining whether Mormons were polygamists given the dearth of Mormon marriage records: "The defendant on numerous occasions deliberately admitted and declared that Emily Spencer was his wife. He introduced her (Emily) to various persons as 'his wife.' […] Going back a little, we find that immediately after coming out of the Endowment House, on the occasion of the marriage, of himself and Carrie Owen, defendant declared to Carrie Owen that the marriage between himself and Emily had already taken place. […] He afterwards said to Carrie Owen, 'I have never admitted to you before that Emily Spencer is my first wife, you are my second. But there is not witness about to hear what I am telling you.'"[216] Informants, and possibly even Mormons at the party, relayed similar kinds of anecdotes and conversations to territorial officers. The fact that Justice Boreman considered these admissions as credible evidence highlighted the otherwise lack of evidence denoting polygamy in the Territory of Utah.

Nonetheless, he determined they were deliberate and factual statements. Justice Boreman praised the informants who repeated conversations for their commitment to the law, and reprimanded those who chose to protect polygamists: "The public demonstrations and the general condition of society here, show the praise that is awarded to such as shrink from their duty to uphold and obey the law and divulge these secrets, and such things also point unerringly to the ignominy and ostracism which the friends of this crime of polygamy seek to visit upon those who are honorable enough and brave enough to expose those hidden criminalities. […] Polygamy is no more sacred than any other crime and other crimes are daily in courts of justice established by circumstantial evidence and admissions."[217] Justice Boreman did not clearly

identify the informants, but the political implications of his praise surpassed the need for such identification. His characterization of polygamy as "no more sacred than any other crime" effectively discredited the religiousness of belief in polygamy previously granted to the Mormons in the *Reynolds* decision. This point demonstrates that, even if we narrow our focus on government monitoring of the Mormons to the discussion of evidence in the Supreme Court cases, justices within the various cases also differed in their opinions and individual viewpoints.

After this detailed description of Miles's alleged confessions, Justice Boreman added that the verdict of the jury was corroborated by a "variety of circumstances," and not based solely on confessions or declarations of the defendant. Boreman provided the example of how the defendant's conduct showed that his marriage to Emily Spencer was contemplated for a long time as a first marriage. Miles, his two wives, and a third woman, Julia Spencer, asked a man by the name of John Taylor whether the three women should marry Miles. Justice Boreman interestingly referred to John Taylor here as "the head of the so-called 'Church of Jesus Christ of Latter Day Saints,'" insinuating his personal opinion that Mormonism was an inauthentic religion. Justice Boreman declared that this information functioned as evidence against Miles since it indicated Miles had considered entering into a polygamous marriage with the women prior to going to the Endowment House. Daniel H. Wells, a counsellor to the Mormon president in charge of performing marriage ceremonies at the Endowment House, briefly addressed the documentation of Mormon marriages.[218] Wells claimed that he was unaware of whether any of the marriages he performed were plural marriages, but he did not deny the possibility that some marriages were plural in nature.[219]

According to Wells's account, he had informed Miles that it was the right of his first wife to hand off the second wife to Miles in a Mormon marriage ceremony. Miles inadvertently admitted to having two wives at this point. When Caroline Owens tried to renege on the marriage due to contempt for the first wife, Miles told Wells to "never mind" the tradition of the first wife handing off the second wife.[220] Miles then led Caroline and Emily to a reception party at the house of Angus Cannon, and, according to the account, treated Carrie Owens as less of a wife.[221] After Miles was arrested and Caroline Owens left him, Miles promised her that if she returned, he would leave his first wife, Emily Spencer.[222] Wells's anecdote was comprised of facts combined with circumstances to prove that Miles was a polygamist.[223]

Similar evidence sustained a conviction in another 1885 Utah Supreme Court case that cited *Miles* by asserting it was not necessary to produce eye witnesses or a marriage certificate to prove polygamy. Instead, one justice averred in the case: "Marriage may be proven by the declarations and admissions of the accused, and such declarations are proper to be considered by the jury as tending to prove an actual marriage."[224] The opinion of a yet another case stated, "Conversations with the accused, if they contain voluntary admissions or confessions tending to prove his guilt, are admissible against him."[225] This monitoring system for identifying polygamists, however, offered no means to ensure witnesses' claims about conversations were true.

Unlike the decision in *Reynolds*, the United States Supreme Court reversed Miles's conviction for bigamy. Miles appealed on the grounds that his second wife's testimony was nullified by a law that a husband should not be a witness against his wife, and vice versa.[226] The Court averred that "no first marriage or other marriage of defendant Miles was proven to the

court or jury; that admissions or decorations alone cannot prove a marriage in a case such as the one at bar,"[227] thereby reversing Miles's conviction. In short, the Court reversed the conviction due to doubtful evidence used to prove Miles's first marriage to Emily Spencer. Once Caroline Owens became Miles's only proven wife, she was unable to testify against her legal husband in court. While the *Miles* decision could not save polygamy, it pointed to the questionable system used to collect information on polygamists. The decision also pressured federal officers, marshals, and district attorneys to become more accountable in their monitoring methods.

**C. Mormon Americanness Revisited**

A few years after the *Miles* decision, Charles William Bennett who, as mentioned earlier, was likely the same non-Mormon Grand Master of the Wasatch Lodge, of the Grand Lodge of Ancient, Free, and Accepted Masons of Utah,[228] addressed Congress in 1883 about whether the Mormon problem was correctly understood.[229] His argument was important because, by this time, there were far fewer defenders of Mormonism. Bennett recommended that the Masonic library, "the largest and best regulated library . . . in the Territory," add general interest books to the Masonic collection to benefit anyone who wished to learn.[230] This recommendation indicated Bennett's commitment to improving the social conditions of Mormons and non-Mormons alike. The people of Utah, according to Bennett, were "simple minded, impressionable, ignorant, and in rude form, deeply religious."[231] This characterization rhetorically removed blame from the Mormons by attributing their flaws to ignorance, and simultaneously redeemed them by spotlighting their religiosity. Yet he then transitioned to demographic data, and in one fell swoop, suggested that "[w]ith few exceptions they are uneducated, unintelligent, common people."[232]

At this point, approximately one hundred and fifty thousand people lived in Utah and the neighboring territories, eight-tenths of whom were born in Norway, Sweden, Denmark, England, and Wales, subtly adducing the Mormons' foreignness. He also indicated they were of lower socioeconomic backgrounds, as the Scandinavians were mostly of the peasant class, and the English and Welsh were mostly from manufacturing, mining, farming, and generally poor backgrounds. Bennett's emphasis on the lower socioeconomic status of the Mormons strategically minimized their accountability due to poor judgment, including judgment on the validity of polygamy as a religious belief.

Bennett nonetheless praised the religiosity of the Mormons, implying that zealousness was a point in favor of Utah statehood: "Having received this new religion, they cherish it as the very will of God. They religiously believe that Smith was a prophet . . . It need hardly be said that with these ignorant people these beliefs engender fanatical zeal."[233] Missouri House Representative James Blair responded by questioning the Christian framework for evaluating what was or was not religious, and wondered how Mormonism or polygamy might be considered nonreligious based on the *Webster* definition of religion as "any system of faith or worship…true or false religion."[234]

Bennett did not recommend against the Mormon possibility of citizenship, but he did claim that their nuanced interpretation of religious liberty legitimized polygamy: "The person charged with and convicted of polygamy, in their view, therefore, suffers for their religion."[235] If polygamy was a legitimate practice, he argued, punishment would be ineffective: "[T]he principal object of punishment fails in these cases. . . . [It] does not reform the people, or eradicate the spirit which leads to the commission of the crime."[236] The implication of Bennett's

statement was that the federal government could have devised a better system for teaching the Mormon people the law, as they possessed the potential for becoming good citizens: "Looking to their bone and sinew and habits of industry, they are good stock for producing American citizens as the years roll on. Many, perhaps most, of the adults who have been here long enough have been naturalized. Most of them, therefore, and certainly their children are ours—are fellow citizens with us."[237] The goal of tailoring Utah for statehood was far more than an implied possibility at this point, as demonstrated by Bennett's emphasis on citizenship. His call to produce Americans, the underlining narrative of the federal monitoring system, would eliminate the need for governmental monitoring, since proper citizens would ideally conduct their affairs within societal norms.

Yet Bennett's testimony suggested that in 1883, Congress was still unsure about whether to accept the Mormon people. Despite Mormons' potential, the federal government needed to "make good citizens of them," as they were still, according to Bennett, "almost without exception un-American. Worse, they were hostile to the government and wrapped up in their fanaticism."[238] For Bennett, the Church of Latter-day Saints continually dictated the politics of Mormons: "While the crime of polygamy is most offensive, perhaps the fact that the priesthood absolutely dictates the political action of the Mormon masses is, according to our ideas of free government, the most serious and threatening."[239] Polygamy may have been gradually losing in the courts, but Mormon political activity was the next area to regulate. In other words, polygamy was the focal point within the government monitoring system, but preparing Utah for statehood was the longterm objective.

In a larger effort to suggest how and when the Territory of Utah would be suitable for statehood, Bennett lamented the failed impact of the Edmunds Act and, in particular, the Utah Commission. The Utah Commission determined whether evidence was sufficient to bring a suspected polygamist to trial. Bennett characterized the Commission as ineffective: "These provisions were designed to strike at the political power of the Church; but the blow was a very weak one and the mode was puerile."[240] The President, under advisory of the Senate, appointed five commissioners, and the Senate appointed the registration officers and judges who would oversee elections and solicit votes. But this monitoring board did not seamlessly weave into the fabrics of Mormon life: "At present the commissioners are all nonresidents of the Territory, and consequently know few of the people and cannot be very conversant with the Mormon system."[241] Bennett surmised that the Commission was on the right track in solving the Mormon problem by registering non-polygamist voters, prosecuting polygamists, and offering numerical data about the Mormons to the federal government. Yet he added that it was losing money by offering jobs to strangers rather than adding to the salaries of existing employees. At the time, approximately one hundred polygamists had been convicted of cohabiting with more than one wife.[242]

Ultimately, though, Bennett asserted that the Territory of Utah should be directly governed by or under the supervision of Congress and its thoughtful, methodical measures.[243] His recommendation required increased supervision to identify crimes: "The appropriations for judicial expenses, secret service, paying witnesses, etc., should be largely increased, so that efficient work could be done in discovering offenders and bringing them to trial."[244] Yet he mused over the possibility of a government penitentiary in Salt Lake City to "demonstrate to the

Mormons that it is here to stay . . . and the enforcement of republican ideas instead of mock-religious mummery."[245] To attain statehood, the Mormons needed to comply with national culture.

**D. Belief Can Obstruct Objectivity and Americanness**

In the early months of 1885, the United States Supreme Court affirmed the judgment in the Supreme Court of the Territory of Utah in another polygamy case, *Clawson v. United States* (1885).[246] The defense of *Clawson* posited that the grand jury of the Utah Supreme Court was not legally constituted, and that the jury had been improperly assembled by illegally excluding fifteen qualified jurors and then selecting five grand jurors without any notice of the drawing, which was required by law. In other words, this was another case centered on the jury selection process.[247] Rudger Clawson was tracked down by marshals and found with one of his wives. The case provided insight into the comprehensiveness with which the federal government monitored Mormons in its battle against polygamy: by interrogating the beliefs of the individuals who were called to jury duty. The United States Supreme Court affirmed the judgment of the Utah Supreme Court, noting that once the list of original jurors was exhausted, it was legal to retrieve new ones in an open call.[248]

Similar to the jurors of *Miles*, potential jurors of *Clawson* were asked under oath by the United States attorneys whether they practiced polygamy. Mormons who were removed from the jury willingly stated that polygamy was a fundamental doctrine of their church, and that it did not equate to adultery. Jury duty was contentious because Mormons wanted a fair representation of their community in trials pertaining in particular to polygamy. The United States attorneys saw polygamists as incompetent to sit on the jury since polygamy was seen as mutually exclusive

with federal institutions and the Constitution.[249] In other words, serving on the jury was a symbol of citizenship, and polygamy was a symbol of an obfuscated Mormon worldview. After *Clawson*, there were over fourteen hundred indictments, with a heavy concentration of prosecutions in the years 1886-1889.[250] Mormons, as explained earlier, largely escaped prosecution until the Morrill Anti-Bigamy Act was revived as the 1882 Edmunds Act.

A few months later, *Murphy v. Ramsey* (1885) redirected the focus on how polygamy affected the home to whether polygamists should have had the right to vote. In the Supreme Court of the Territory of Utah, Mormon plaintiffs claimed they had been damaged by the five-member Utah Commission that regulated the voting process, as well as by deputy registrars appointed by the Commission.[251] They furthered that the defendants required them to sign illegal statements stating they were neither bigamists nor polygamists. When the Mormon plaintiffs refused to sign written statements, they were denied the right to vote. Yet again the commissioners, who represented the interests of the federal government by overseeing who signed the statements, indirectly monitored polygamy through this system. The Utah Supreme Court acknowledged the written statements were not a prerequisite to vote, and therefore the board could not enforce them. However, the Court furthered that since the statements were invalid, the Mormon plaintiffs themselves were liable for signing the affidavits. The plaintiffs then appealed to the United States Supreme Court.

*Murphy v. Ramsey* was distinctive in that it was not a narrative about the federal government directly seeking out polygamists. Rather, the five Mormon plaintiffs sought justice for perceived slights against them. Once again, word-of-mouth testimony sufficed as evidence in court. One of the five Mormon defendants, Mildred E. Randall, signed the affidavit stating that

she did not participate in polygamy. She requested that defendant Harmel Pratt place her name on the voter registration list. However, Pratt, "acting under directions of the other defendants, willfully and maliciously refused to receive said affidavit or to swear her thereto, or to register her as a voter of said precinct, but on the contrary willfully and maliciously struck her name off the list of registered voters of said precinct, and left her name off the list of voters of said precinct, made at said registration."[252] After this encounter, Randall approached the county registration officer, E. D. Hoge, and then the commissioners, who each refused to change the ruling. Her anecdote demonstrated the lack of checks and balances in territorial affairs. It also demonstrated how the broader Mormon monitoring system, through voter registration, included tactics that were far less obvious than spying on households but instead depended on the accountability of individual federal officers. The Court decided that those who attested they were not bigamists should have had been eligible to vote.[253]

A month after the *Murphy v. Ramsey* decision, the Church of Jesus Christ of Latter-Day Saints held a general conference in Logan, Utah, on April 5, 1885, from which many Mormon leaders were absent since they were hiding in the Underground.[254] The Church reported, commented on, and published these events.[255] Federal officials possibly lurked at these general conferences since by 1888, federal marshals had infiltrated almost every community in Utah and southern Idaho looking for "cohabs."[256] One of the goals of this particular conference was to draft resolutions for the President of the United States about the treatment of Mormons by federal officials in the Territory of Utah. Only two percent of the church practiced plural marriage by this time, and therefore "it was an act of great injustice to the ninety-eight per cent to be abused and outraged as they are by the high-handed action of Federal officials, because of

the ‘raid’ upon alleged violates of the Edmunds law.”[257] According to the testimony at the 1885 meeting of John T. Caine, who was a delegate to the House of Representatives from the Territory of Utah, problems for the Mormons resurfaced shortly after Congress first recognized the Territory of Utah in 1859.

Not only were representatives of the federal government invading Mormon communities out west, but they were propagating misleading rumors about the people back east in the states: “Federal officials, strangers to our faith, men having no interest in common with our people, were sent among us. One who disgraced the ermine he so unworthily wore, in the hope of warding off the disgrace his misconduct merited, spread in the east false and unfounded stories of ‘Mormon’ disloyalty and ‘Mormon’ wickedness. The accusations were months in reaching the ears of the accused.”[258] Caine denounced what he perceived as improvident federal officials rushing into the territory: “An army was sent to chastise an unoffending people; to subdue an imaginary insurrection. It is not necessary to dwell on the oft-told tale.”[259] The opening of the coal mines to non-Mormon workers inevitably “brought hosts of strangers into the Territory” who were initially unfamiliar with Mormon history or culture.[260] Caine condemned the “demagogues” among them who misrepresented Mormons in publications throughout the country, intending to drive a wedge between the Mormons and the newcomers. From his perspective, “After years of effort, these agitators succeeded in having Congress pass legislation inimical to the people of Utah.”[261]

Speakers at the conference, including Caine, defended Mormons who were falsely accused of polygamy. But there were also speakers who defended polygamy itself. A man named Mr. Whitney believed his fellow Mormons had been unfairly persecuted as disloyal citizens and

religious outsiders, aligned with Jewish and Muslim people: "All through our history the general government has seemed to regard us less as loyal American citizens than as a dangerous alien element. . . . The land whose Constitution, in the language of its framers, was hoped to be broad enough to shelter under its mantle the Jew, the Mohammedan, the Pagan, as well as the Christian, has scarcely been able to tolerate, much less protect, the numerically insignificant 'Mormons.'"[262] Whitney agreed with Caine's general dissatisfaction with how federal officers supervised the Territory of Utah. He believed that for the most part, territorial governors, judges, attorneys, and marshals did not have the best interest of the Mormon people in mind. The removal of Mormons from government positions stripped them of their authority over issues that affected their fellow Mormons. Mormon postmasters, for example, were oftentimes "displaced for strangers—in some instances mere transients," and post offices named after Mormons who were central to the early prosperity of the Territory of Utah were renamed without explanation.[263]

A year later, in an open letter to the Committee on the Judiciary of the House of Representatives after his return from the Rocky Mountain region, the statistician and economist Joseph Nimmo, Jr. observed Mormon culture,[264] which he classified as a "conglomerate of religion, trade and politics."[265] Nimmo decided that it would "soon command the attention of the House of Representatives" and the public.[266] The opinion of "loyal" non-Mormon Utah residents was that "the Mormons had reached a point, where, at all hazards they had resolved by violent means, once more to resist the authority of the United States."[267] Nimmo referenced a letter by Captain Van Vliet, who had written to the Secretary of War about a speech by then head of the Church of Latter-day Saints, John Taylor, to an audience of four thousand people. In his speech, Taylor vaguely stated that only those who were appointed positions by the Lord were entitled to

said positions.[268] Capt. Van Vliet's decision to report this speech showed the ongoing fear that Mormon citizens might prioritize the interests of the Church of Latter-day Saints over those of the United States. Public morale about the Mormons and the potential for Utah statehood still required maintenance and, more boldly, a formal renunciation of polygamy itself.

**V. The Shift from Attacking Polygamy to Preserving Monogamy**

The high-profile polygamy case, *Snow v. United States* (1886), marked the rapid decline of polygamy in Utah and the steady progress toward statehood. Lorenzo Snow appealed three cohabitation indictments from the Supreme Court of the Territory of Utah in the United States Supreme Court. Snow's daughters with different wives provided evidence in the trial. One daughter testified that she knew the women suspected of being her father's wives, as well as where they lived, and that they all had children who used the Snow surname. Additional evidence included conversations with Snow, the setup of the women's houses, and the dining arrangements of the involved families.

Lorenzo Snow's six wives lived in one town, in which he publicly acknowledged them as his wives at various events. A handful of these wives testified against him. One wife, Sarah Snow, testified about the chronology of events and the polygamous nature of Snow's marriages. When asked why her husband did not visit her as frequently as he had in the past, she responded: "Well, sometimes he calls and sometimes he don't [sic] call. I do not see him as much as I did five years ago, for he lived right there five years ago; he does not visit me as much as he did when he boarded with me. Five years ago he lived right there, next door."[269] When another wife, Harriet Snow, was asked the same question, she replied that their relations differed from previous years: "A good deal; in my younger days I lived with him as wife and raised him [sic] children.

Now I am an old lady and I do not consider the relations binding upon me in my younger days to be so now. I do not live with him in the same way."[270] A third wife, Mary Snow, added: "He does not call so much, for the reason that he has been away from town. He does not visit me as much as he did a number of years ago."[271] A fourth wife, Eleanor Snow, offered an anecdote that implicated Snow as a polygamist: "I guess I recognized him as my husband and me as his wife during 1885; don't know; the difference in our relationship the last year and formerly he does not live at my place. I guess the only difference is he is not in my company so much–you understand. Previous to that, he had visited and dined with me once in a while [sic]. When he dined with me, it was with me and my children, unless there was company to these family gatherings. Mr. Snow occupied the position as head of the family and occupies the head of the table when he is there; his friends all put him at the head of the table."[272] The women were not hostile toward Snow in these responses, nor did they offer opinions about the morality of polygamy. But their testimonies were considered evidence against him. Additional witnesses claimed they saw Lorenzo Snow in company with different wives in various settings, such as riding horses or visiting the theater. One witness claimed to have seen Lorenzo Snow enter and leave the gate in front of the home where Sarah and two other wives lived, but the witness did not see him move in and out of the home itself. An additional witness supplied the federal attorney with a diagram showing how the layout of Snow's block and fences could conceal a person's movement from one brick house to another without being visible on the street.[273]

The United States Deputy Marshal offered his recollection of Snow's initial arrest. The Marshal had searched the house and found a ripped carpet concealing a small trap door that he believed led to other compartments sheltering some of Snow's wives and children. Under the

door, he found two connected small apartments, in which Snow was sitting. Hesitant to exit, Lorenzo Snow allegedly claimed: "All right I am coming out. That is all right, boys; you have done your duty; come and take a drink with me."[274]

The Utah Supreme Court ruled that the evidence against Snow showed "one of the most aggravated cases and worst examples of polygamy," since he had one lawful and six plural wives, and he maintained and publicly acknowledged all of them.[275] *Snow* highlighted a shift from punishing polygamy to preserving monogamy, by not only punishing polygamy when evidence was clearly available, but by also preventing men from "flaunting in the face of the world the ostentation and opportunities of a bigamous household with all the outward appearances of the continuance of the same relations which existed before the act was passed, and without reference to what may occur in the privacy of those relations."[276] In other words, monitoring polygamy was less about punishing criminal activity than it was about promoting cultural uniformity.

The opinion of Justice Boreman nonetheless implied that the government desperately collected witnesses to testify in *Snow*, repeating the prosecution's strategy in previous polygamy cases: "It is now a part of the history of this Territory that in cases of this character nearly all of the witnesses upon the Government has to depend to make out its case are unwilling witnesses. They are generally members of different households of the defendant, under his influence, and also subject to a powerful church pressure to compel them to shield the accused."[277] Boreman also addressed the burden of proving cohabitation, indicating why the judges and justices accepted evidence that they might otherwise consider tenuous: "In these polygamous relations there never is and cannot be that intimate association and habitual attention given by the man to

the various women as exist between a husband and his wife in the monogamic state. Consequently, in the very nature of things, the proof of cohabitation cannot be made as clear as in the case of a monogamic marriage, simply because the facts of which proof is made do not as abundantly exist."[278] In Boreman's opinion, we can see how facts were stretched to convict polygamists, but the lack of printed evidence drove this strategy. In addressing the discussion of Snow's seventieth birthday party, the justice recounted how one witness stated that "many neighbors and friends outside of the Snow family" were there, and the justice then added that contextually, the "Snow family" referred to the various polygamous households of Snow.[279] It was evident that the Boreman exhibited sympathy toward the older women, who were seemingly pushed out by younger women "to lead a more lonely life" in the polygamous system, reifying one view of Mormon women as victims rather than willing participators: "It is the natural result of a system founded in sensualism and is the same here as in every other country where polygamy or any other system exists to shield the lust of men."[280] The opinion also revealed how some central figures within the federal government viewed squashing polygamy and praising monogamy as a way to confirm the national morale of a progressive, civilized society.

Another justice, Justice Powers, wrote an opinion that showed why the *Snow* decision did not just attack polygamy but defended monogamy. Powers cited in his opinion the political philosopher and professor, Francis Lieber, who had suggested that polygamy led to a patriarchal principle "which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy."[281] Citing Chancellor Kent, the justice continued that polygamy, which he referred to as "held in abhorrence by the Christian world,"[282] could exist without appearing to disturb the social conditions of surrounding people,

but unless restricted by a law or constitution, it was within the power of every civil government to determine whether polygamy should be the law of social life.[283]

As a lawyer representing Snow in the Supreme Court,[284] George Ticknor Curtis was also a constitutional scholar, historian, and publicist who defended Mormonism in court and in newspapers. Though not a Mormon himself, he delivered a plea for religious liberty in defense of the Mormons of Utah shortly before retiring.[285] He was a commissioner under the 1850 Fugitive Slave Law that compelled northerners to send escaped slaves back to their owners, and he supported slavery as a necessary part of the North-South settlement.[286] This viewpoint possibly influenced his defense of polygamy that many of Curtis's contemporaries aligned with slavery. Curtis was a lawyer for Lorenzo Snow for two cases that reached the Supreme Court. *The Washington Post* summarized Curtis's stance on the Snow ruling. Curtis believed that Snow should not have been punished for living and sharing a bed with his youngest and seventh wife, while only occasionally visiting the wives in the daytime and providing them, and their children, with financial support: "The arrest of such a man, he says, is an outrage, and amounts to religious persecution and a violation of constitutional rights."[287] In other words, Curtis believed that men should be able to have multiple wives as long as they did not live with all of them, and cohabitation could not be assumed based on the fact that men financially supported or visited multiple wives.

*The Atlanta Constitution* reported that Curtis pronounced "their church the most democratic organization in the world," and, despite defending Snow, believed that the immigration of non-Mormons to Utah would more quickly eradicate polygamy, an institution that was already on the decline to a mere total of two thousand heads of polygamous families.

The article added that polygamy, "the real ground of our objection to the Mormons," would disintegrate under those circumstances explained by Curtis. At the time, Utah was deemed as ill-prepared for statehood, but would become prepared once the territory proved to "be in-complete accord with the spirit of our institutions, and the genius of our government."[288]

Curtis provocatively claimed that Snow's three convictions violated the free exercise of religion clause of the First Amendment.[289] He argued that the evidence used to convict Snow was faulty. Details about the evidence, namely, how and with what intent he referred to the women as his wives, were thought by the opposing sides to both support and debunk the accusation. Additionally, Curtis pointed out that the women were made compulsory witnesses for the prosecution.[290] The wives' testimonies constituted the majority of the evidence, along with "the proof of his visits to the houses inhabited by some of them."[291] The question of Mormon women, who they were and how they understood their role in society, surfaced again in this case. One judge claimed: "We cannot, unless we meet the Mormon women of Utah halfway, and recognize who and what they are, we cannot accomplish anything useful."[292] The judge furthered they were "treating these women, many of them women of New England birth, people, at least of intelligence, educated in the public and private schools of our older States, as if they were a set of degraded beings."[293] The judge's emphasis on the New England origin of Mormon women continued the tradition of distinguishing foreign from natural barbarism. Mormon women who came from New England might deserve, according to this rationale, more leniency and sympathy.

Lorenzo Snow, similar to previous polygamists whose cases reached the United States Supreme Court, questioned the legality of his grand jury. He also made a technical argument, that

the indictment did not define which woman was Snow's first and legal wife.[294] While the testimonies of each of Snow's wives did not deny the possible existence of other wives,[295] the ambiguity over which wife was the first wife questioned whether the federal government relied on unchecked facts and therefore dubious evidence to prove Snow was a polygamist. The use of doubtful information was amplified by the fact that Snow's punishment was increased by the segregation of two related but unequal offenses, sexual intercourse and cohabitation.[296] Justice Zane wrote in the Court opinion that the segregation of offenses tied to how Congress understood polygamy at the time.

Zane, a major judicial force in government sanctions against polygamists, "demonstrated considerable leniency towards those who were willing to obey the law and abandon plural marriage,"[297] particularly in comparison to the actions of Justice McKean. For example, in one ruling, Zane lamented that outsiders and informants constantly monitored Mormons: "And for this end an army of sneaks and informers, with authority of inquisitors to intrude into the privacy of domestic relations with indecent questionings of children and women, becomes a necessity to maintain the 'sanctity of the law!'"[298] He acknowledged that some Mormons gave rise to the "suspicion of the horde of spotters, ever eager to pry into the affairs of their neighbors with prurient curiosity that there must be a plural marriage concealed in that relation, he is at once indicted and sentenced for unlawful cohabitation!"[299] Part of the justification for segregating charges was that Mormon polygamists too often escaped punishment: "Congress, therefore, forbade plural marriage in appearance only, as well as in form, and by the example of punishment it doubtless intended to eradicate the example of apparent plural marriages as well as the plural marriage in form."[300]

Allowing for the segregation of charges in the legislative branch and enforcing segregated charges in the judicial branch represented more than a legal loophole, but rather a comprehensive, strategic federal campaign to eliminate polygamy. One judge dissented from the opinion due to the "weakness of the testimony, the immaterial evidence received from the witnesses,"[301] notably critiquing the kind and means of information used to convict Snow. The Assistant District Attorney had claimed that Snow was obliged to show all the facts in his defense from his wives and children, but stipulated that the prosecution in turn did not have to present its facts because they had been "put out of the way by the procurement of the defendant."[302] The attorney's statement affirmed that the recollection of the arrest by the Deputy Marshal and the neutral testimonies of Snow's wives was sufficient evidence to convict Snow for polygamy. *Snow* marked a shift in the federal campaign not just attacking polygamy, but emphasizing the significance of monogamy by splitting the charges into intercourse and cohabitation, thereby punishing those who chose to even live with more than one woman, much less engage in intercourse with more than one woman.

The *Snow* justices' concerns about the theological beliefs of the Mormons, aside from the more pragmatic implications of polygamy, meant that Utah residents were still considered to be potentially unprepared for citizenship. Justice Miller at one point asked George Ticknor Curtis for clarity about precisely what was meant by marriage within the Mormon faith: "If I do not interrupt this portion of your argument, I would like to explain this spiritual aspect."[303] After laying out an explanation briefly, Curtis returned the conversation to women and to the First Amendment: "I must now, as rapidly as I can, call your attention to the references which show historically the intent and meaning of the first amendment [sic] of the Constitution, which

forbids Congress from making any law 'prohibiting the free exercise of religion."[304] He argued that the free exercise of religion was not limited to public worship or external acts, but that beliefs should also be protected if those beliefs did not harm the public.

The issue of women in Utah lingered in the concerns of federal officials following the *Snow* decision. In 1888, Eugene Hale of Maine informed the Senate that Mormon women in Utah wished to withdraw from polygamous unions a few years prior, but were financially dependent on their husbands. This issue intrigued the National Woman's Home Missionary Society, which tried to help Mormon women through an "organized effort" that resulted in the Industrial Christian Home Association of Utah.[305] This organization consisted of both Mormon and non-Mormon women who distributed applications for relief from polygamous unions, in the hopes that women who responded could be taught how to work outside of domestic settings.[306] Voluntary associations such as this one contributed to the comprehensive federal campaign to suppress polygamy: "By this appropriation Congress embarked in the work of aiding dependent women and children seeking to escape from polygamous relations and added the important words that it was done 'with a view to aid in the suppression of polygamy in the Territory.'"[307] Relief applications were not an example of direct monitoring, but they demonstrated an avenue through which the federal government indirectly acquired information about Mormon men through women and children. They were also a means for preventing polygamy in the territories, as well as a way for the government to maintain relations with Mormon women and children while undermining the authority of Mormon polygamist men.

The final defeat to polygamy before its formal renouncement occurred when the Church challenged its status as a corporation in *Late Corporation of the Church of Latter-day Saints v.*

*United States* (1890). In the Utah Supreme Court three years prior, James O. Broadhead had characterized the Mormon Church as a corporation. One of the first acts of the Mormon-controlled territorial legislature after Congress organized the Territory of Utah in 1850 was to grant the church corporate status. The church had the legal right to govern its constituents' marriages, and to acquire and oversee an unlimited amount of land, money, and goods. Moreover, the Mormon Church became both a religious and charitable corporation that had the power to sue and be sued. These rights of the Mormon Church exceeded the legal powers given to church corporations in the states.[308] However, as Broadhead explained, Congress dissolved the Mormon corporation in 1887 when the ordinance was disapproved and annulled.[309] Without the corporation status, the Church was limited in terms of how much property it could own. The dissolution of this status was the final impetus for change to the Mormon doctrine of polygamy.

Examining financial records at first glance offered a simpler alternative to monitoring polygamy and the Mormon community more broadly, but the transcript from the Supreme Court of the Territory of Utah used in *Late Corporation* highlighted the instability of how the federal government continued to collect information on the Mormons in the years leading up to Utah statehood: "[T]he Church of Jesus Christ of Latter-Day Saints was organized and did buy, receive, acquire, and hold large amounts of real and personal property of great value in the Territory of Utah after the 1st day of July, 1862, the precise amount, value, or description of which the plaintiff is unable to state, but asked leave to prove; and the plaintiff alleges, on information and belief, that the value of the real estate is about two millions of dollars and of the personal property about one million of dollars."[310] The Church appealed the dissolution of its corporation status on three premises.

First, it argued that the dissolution of the corporation did not obey the decision in *Dartmouth College v. Woodward* (1819), which enforced the idea that a state could not alter the charter of a charitable corporation unless the power to do so was evident in the original document. Second, the Church challenged that the judiciary, and not the legislature, traditionally dissolved corporations. Third, the Church argued that confiscated property should be returned to the individual members of the Church who had donated the property. The Supreme Court rejected all three arguments, stating in the opinion that the Property Clause permitted Congress to oversee legislative issues in the territories. The Supreme Court added that the government could not return the property to donors since there was no way to ensure assets would not promote polygamy in the future. Instead, the Court would choose the charities to receive the properties. This last point of transferring property and consequently undermining the influence of a questionable religion tied into the larger narrative of how the federal government sought to protect citizens from detrimental influence and prevent polygamy from resurfacing in later years.

Similar to the racial characterization of the Mormons in *Reynolds*, the Court compared the Mormon Church to hostile foreigners, or "Thugs of India," who believed in assassination for religious purposes.[311] The subtle construction of who was or was not a proper American was interwoven with this final landmark Supreme Court decision about what the limits of power should have been for religious institutions in the nation. By the decision of *Late Corporation*, "[t]he jurisprudence surrounding Mormon cases thus had begun, more and more, to institute Protestant scriptural and moral prescriptions" into a constitutional code.[312] But what hurt the Saints the most in *Late Corporation* was its impact on their financial pockets. Four months after

the decision, Mormon President Wilford Woodruff issued the 1890 Manifesto declaring the end of Mormon polygamy.

Utah was granted statehood in 1896, but the debates in the years leading up to its statehood were lively. Some publications accused the Associated Press general manager of falsely representing the Mormons as part of a conspiracy to procure statehood for Utah.[313] George Ticknor Curtis, the lawyer who defended Lorenzo Snow, published his opinion in the *New York Tribune* in 1883 about, as indicated in the the headline, "the reasons for his faith in the Mormons," declaring: "Now whether the discontinuance of polygamy is due to the legislation or to a change in the sentiments of the Mormons themselves, it has certainly taken place, as I can testify."[314] As part of the comprehensive campaign to convert Utah into a state, the judicial and legislative branches coerced Mormons to abandon polygamy and its isolated economy, practices that lawmakers deemed incompatible with United States statehood.

Even though Woodruff had issued the Manifesto several years prior, tensions between Mormons and the anti-Mormons in the Territory of Utah remained high in 1896, when the non-Mormons who still lived in the valley complained they were "constantly under the surveillance of the polygamous church."[315] In 1888, the debate over whether Utah should be granted statehood continued in the Senate.[316] Significantly in these discussions, John T. Caine of Utah argued that polygamy was a moot point for objecting against granting Utah Mormons citizenship, since less than one percent of the population of Utah was still polygamous. He did not, however, cite the source of this percentage.[317] Edmunds disagreed, suggesting that Caine had lied about the small portion of polygamy among Mormons.

This discussion showed how the source and transmission of information shaped governmental discussions about the Mormons. The press factored into congressional debates about the Mormons in the years leading to statehood. When accusing Caine of lying about the circumstances of polygamy, Edmunds cited editorials, including an 1888 article by Judge C. C. Goodwin, the editor of an anti-Mormon newspaper, the *Salt Lake Tribune*. Edmunds also argued that national safety should be a primary concern by citing a secretly circulated 1885 Mormon presidential summons regarding organized resistance to national law. The summons claimed the Mormon Church had been denied its constitutional rights and was under attack, forcing it to create a defense fund that united Utah Mormons with Mormon communities in Idaho and Arizona. The summons stated: "It is of the utmost importance to us as a people that these cases should be contested before the courts."[318] Edmunds, in short, attempted to portray the Mormons as willing to commit treason and disrupt the peace of the United States.

Caine retorted by reaffirming the authenticity of his account, but more strikingly, by arguing that past interventions in Mormon affairs were unfounded. He presented a letter he had written to President Cleveland about troops that were wrongfully sent to Utah based on the accusations of the Utah governor and an "intemperate and violently partisan newspaper," controlled by the Utah governor and federal officials. This newspaper, along with the Associated Press dispatches, permitted "wide circulation to their deliberately manufactured falsehoods."[319] Caine advised the President that the corrupt federal officials were unworthy to continue representing the federal government.

A year later, in 1889, the lawyer Jeremiah M. Wilson, the former United States Representative for Indiana, argued in favor of admitting Utah as a state before the House

Committee on Territories. He compared the debates over Utah to those over Idaho, which would become a state the following year, once Mormons of high positions confirmed they would live up to national law and not practice polygamy.[320] Before Utah could become a state, the federal government required a minimum number of inhabitants. Wilson attested Utah maintained at two hundred thousand literate people, the least illiterate people of any Territory.[321] Wilson also commented on the success of the Utah economy, which boasted "vast agricultural, mineral, and manufacturing resources, and the intelligence, energy, and high character of her people make statehood of vast importance, not only to Utah, but to the whole country."[322] Intelligence about the Mormons had worked against polygamy, but it conversely supported their case for statehood.

Discussions about the Mormons preceding statehood sometimes relied on dubious and outdated information, as they had in early debates on polygamy. Judge McBride interrupted Wilson's discussion by asking about the 1882 Commission Report, which stated that twelve thousand polygamists lived in Utah. Wilson responded that those twelve thousand people were no longer involved in polygamous relationships. Robert Newton Baskin, an appointed justice on the Utah Supreme Court, was despised by Mormons for his work against polygamy, but later helped transform Utah into a state.[323] Baskin challenged Wilson's assessment of the numbers, arguing that his sum of current polygamists "would not include those not on the poll-books and would not include aliens, nor those in polygamy under the age of twenty-one years."[324] The discussion dissected numerical details without coming to a definitive conclusion.

Shifting away from the issue of dated information, Wilson more boldly questioned the validity of newspaper articles as sources for arguments: "Judge Baskin referred to an article published in the Millennial Star, and gave the volume and page and ascribed it to Mr. Richards,

the father of the gentleman who has been here before you. Now, he did that same thing before the Senate committee, and . . . Mr. Richards corrected him and stated that his father did not write the article."[325] Wilson eventually changed the subject from details and numbers, critiquing the unsubstantiated claims that Mormons would listen to their leaders before United States government authorities if Utah became a state. He pointed out government leaders' lack of familiarity about the Mormon religion: "It is very evident from the remarks of the gentlemen of the opposition, particularly of Governor West, that they do not understand the doctrines and tenets and belief of the Mormon people. […] This idea that there are revelations to regulate civil and business relations is erroneous and absurd, and not a single intense of anything of the kind has been or can be cited."[326] Wilson rebuked the governor for blaming all Mormons for the crimes of a few, to which Governor West replied, "I am not speaking of individual crimes. I am speaking about authorities and elders."[327] West's comment was representative of the widespread fear that Mormon leaders would, as Wilson explained above, "regulate civil and business relations," impeding the progress of Utah statehood.

West and Wilson also sparred over the number of crimes committed in Salt Lake City in 1886, as Wilson argued that non-Mormons disproportionately committed crimes. He defended his claim, challenging the governor: "If that is not accurate, you have access to the records of the courts in Salt Lake City." Governor West retorted: "But where did you get your information?"[328] At this point, one judge interrupted that it did not matter where he got it since the records were open to both parties, and Judge Baskin jumped into the conversation: "But the records would not show the religious complexion of the parties indicted."[329] Wilson's opponents tried to divert the conversation by interpreting his argument as slandering the religious, non-Mormon majority and

by casting the Mormons as barbaric outsiders: "You state those facts to show the purity of the Mormons over the Gentiles morally?"[330] Wilson replied: "I only mention these statistics to show that a Mormon is not a bad man or woman because a Mormon; nor is a Gentile a good man or woman, or better than a Mormon, because a Gentile; and to show that if the Mormon Church controls its people, it controls them in the direction of good morals and public peace."[331] Like Wilson, Justice H. W. Smith, cited at another House Committee on the Territory hearing, attested to the industriousness of the majority of the Mormon people: "She [Utah] has near a quarter of a million civilized people, who, in point of intelligence, industry, and all the essential qualities of good citizenship, are up to the standard of any American community."[332]

John W. Judd of Tennessee, a pivotal figure in Utah statehood who served as a territorial judge and district attorney in the Territory of Utah and later the first United States District Attorney of the state of Utah,[333] defended Mormonism by drawing a parallel between the Mormon issue and racial discrimination in the United States: "If they were of a different race something of the kind might be said with some truth: but they are American citizens, our own kind and kin and our own blood, with all the aspirations and ambitions of American citizens."[334] Citing the low percentage of polygamists in Utah, he rhetorically united the Mormons and non-Mormons in Utah, showing solidarity in a territory that no longer saw active polygamy: "[I]t is unfair to the Mormon population and unfair to us who live in Utah to undertake the prejudice the minds of the people of the United States, and of their Representatives, against the Mormon people by reason of a state of things which has not existed for years past and which nobody there now favors or upholds."[335]

Justice Smith corroborated Judd's assessment, that Utah was ready for statehood, by arguing that Utah citizens did not just want statehood but the right to elect their own officers and oversee elections, "and to do it at all times with a full knowledge that Congress and the Federal Government have absolute jurisdiction over us."[336] Certain names were blacklisted from voting based on presumptions of polygamy.[337] One speaker offered a powerful statement implying the unethical and even illegitimate use of garnering information about polygamy: "Let it be understood that we are not complaining of the laws but of the methods that are employed in their execution."[338] This speaker's distinction was significant, indicating that the system itself, and not the suppression of polygamy, was a core problem in monitoring the Mormons.

This hearing represented the willingness of the Mormons to align their goals, in front of Congress, with the well-being of the United States, but it also represented a challenge to the way in which the federal government continued to collect information on Mormons through its monitoring system. Quoting the governor, Justice Smith relayed to Congress: "When the Mormon people declared at a general gathering that polygamy was a vital part of their religion, I accepted their action as a sincere expression of their views. Now . . . they have, in the same public way, resolved to refrain from violating the law prohibiting polygamy in the future."[339] And they could not have been more clear, having had formally abolished polygamy two years prior.

## VI. Conclusion

Public and governmental scrutiny of polygamy launched a wider set of criticisms of the Mormons and their institutions, grounded on communal practices, minimal consumption, and independence, "but outsiders saw instead monopoly and protectionism, and resented the church's

interference with competition and a free market."[340] After Utah became a state in 1896, Salt Lake City developed its trade and commerce, and the Mormons turned into "capitalistic, conservative, pro-American individualists."[341]

The Mormons' quest for acceptance did not completely vanish with statehood. In 1898, the League for Social Service presented to Congress a list of reasons why the Mormon, Brigham H. Roberts, should be expelled from Congress. Theodore Schroeder, who had worked as a lawyer for the admission of Utah as a state, moved to New York City in 1901 to participate in the effort to oust Roberts, where he subsequently met radicals and the eventual members of the Free Speech Club.[342] Mormons who sought political positions issued a new wave of concern over the influence of religion in the nation. Roberts met the congressional requirements, as he was at least twenty-five years old, a citizen of seven years, and an inhabitant of his state. But the League wanted to expel him by a two-thirds majority vote based on the "public morality and the general welfare" of the country.[343]

The League believed that Roberts was a practicing polygamist trying to reintroduce polygamy to the House of Representatives.[344] It claimed polygamy proliferated in Utah by citing the *Deseret News* of Salt Lake City, or as the paper called it, the "official organ of the Mormon Church" that "gave lengthy editorial space to the defense of such lawless course, claiming that there was . . . a tacit understanding, not to say contract, that the dead strife (prosecution for polygamy) should be buried."[345] The League also averred that another Mormon, Governor Wells, spoke against Mr. Roberts, accusing him of polygamy.[346] Theodore Schroeder was a key figure in denying Roberts his congressional seat, symbolizing his "dogged crusade against the Mormons which replaced his youthful sympathy for them."[347] Reed Smoot of Utah, elected to the Senate in

1903, defended Roberts's right to serve in office as a member of the Latter-day Saints. Kathleen Flake has argued that in Smoot's hearing, Protestants were the main adversaries to his cause,[348] suggesting that government and political leaders of the Protestant culture continued to evaluate Mormons' Americanness even after the Latter-day Saints formally abandoned polygamy. In 1907, Roberts issued an extensive publication on behalf of the Church of Latter-day Saints that suggested that Mormons were still regarded with suspicion by the public.[349]

And so, even once formal governmental monitoring had subsided, the public speculated about the Mormons through less systematic, objective, or evidence-based methods than those of the government officials. One Mormon anonymously crafted a 1910 letter entitled, "Are the Mormons Loyal to the Government?" as a response to a *Pearson's Magazine* article about Mormons. *Pearson's Magazine* rejected the answer, a decision that justified the Mormon claim that they were unable to defend their public image in printed media. Though the battle for polygamy ended in the United States Supreme Court, some Mormons actively pursued societal acceptance in mass publications: "Mormon Elders are frequently asked why the articles attacking the leaders of the Church, which have recently appeared in various magazines, are not answered. […] Through various interviews in newspapers which have appeared from time to time the President and leading men of the Church have given ample answer to attacks emanating from magazine articles, and magazine people have frequently been appealed to, without success, to open their columns for such answers."[350] This request for representation in media, even after the Mormons of Utah were officially citizens, indicated that Protestant values continued to influence public opinion in the United States and separate Mormons from mainstream Protestantism.

It also resonated with the long battle between the Mormons and the federal government to control the terms with which Mormons carried out their private and public affairs, first as residents of the Territory of Utah and then of Utah the state. Following the strategic campaign against polygamy, the Mormons were thereafter discredited and disempowered by their lack of representation in mass media. Many groups identified by their religion, race, or color have sought similar representation in the American public sphere, but not all were subjected to the discrimination that the Mormons endured. The distinction between belief and action articulated in *Reynolds* aimed to eliminate polygamy from Mormonism and United States society. In this way, the anti-polygamy campaign in the Territory of Utah paralleled the pending surveillance strategies of the American Friends Service Committee Quakers in the Cold War era and post-September 11 Brooklyn Muslims.

---

[40] Rodney Stark, *The Rise of Mormonism*, ed. Reid L. Neilson (New York: Columbia University Press, 2005).

[41] Allan Kent Powell, "Utah Territory," in *Encyclopedia of Mormonism*, ed. Daniel H. Ludlow (New York: Macmillan Publishing Company, 1992), 1504.

[42] *American National Biography Online*, s.v. "Hudson, Frederic," by David A. Copeland, accessed February 9, 2016, http://www.anb.org/articles/16/16-00807.html.

[43] Frederic Hudson, *Journalism in the United States, from 1690 to 1872: Volume II* (New York: Harper & Brothers Publishers, 1873), 494.

[44] Editorial, "Religious Liberty, The Mormons–The Millerites," *The Daily Picayune*, September 15, 1842, 2.

[45] Editorial, "Religious Liberty, The Mormons–The Millerites," 2.

[46] Editorial, "Religious Liberty, The Mormons–The Millerites," 2.

[47] Editorial, "Utah And The Mormons," *Evening Post*, April 4, 1860, 2.

[48] Samuel Bowles, *Our New West: Records of Travel Between The Mississippi River and the Pacific Ocean* (Hartford: Hartford Publishing Company, 1869), 242.

[49] Rabban, *Free Speech in Its Forgotten Years*, 54.

[50] Brudnoy, "Liberty's Bugler," 26.

[51] David Brudnoy, "Liberty's Bugler: The Seven Ages of Theodore Schroeder" (PhD dissertation, Brandeis University, 1971), 40-42.

[52] Brudnoy, "Liberty's Bugler," 62.

[53] David M. Rabban, *Free Speech in Its Forgotten Years* (New York: Cambridge University Press, 1997), 50-52.

[54] Brudnoy, "Liberty's Bugler," 47.

[55] Brudnoy, "Liberty's Bugler," 107.

[56] Mark A. Graber, *Transforming Free Speech: The Ambiguous Legacy of Civil Libertarianism* (Berkeley: University of California Press, 1991), 52.

[57] Theodore Schroeder, *Constitutional Free Speech Defined and Defended in an Unfinished Argument in a Case of Blasphemy* (New York: Free Speech League, 1919), 453.

[58] Richard S. Van Wagoner, *Mormon Polygamy: A History* (Salt Lake City: Signature Books, 1989), 119.

[59] Van Wagoner, *Mormon Polygamy*, 119.

[60] Van Wagoner, *Mormon Polygamy*, 120-121.

[61] Davis Bitton, *The Ritualization of Mormon History, and Other Essays* (Urbana: University of Illinois Press, 1994), 44.

[62] Jacob Soll has demonstrated that Louis XIV's minister, Jean-Baptiste Colbert, built a library that was both humanist in nature but also of practical use for the administration, spanning matters of finance, foreign policy, and domestic affairs. Colbert understood that knowledge from a variety of sources would be useful for building a state. See Jacob Soll, *The Information Master: Jean-Baptiste Cobert's Secret State Intelligence System* (Ann Arbor: University of Michigan Press, 2011), 2.

[63] Philip H. J. Davies, *Intelligence and Government in Britain and the United States, A Comparative Perspective–Vol. 1: Evolution of the United States Intelligence Community* (Santa Barbara: Praeger, 2012), 1.

[64] John E. Hallwas and Roger D. Launius, *Cultures in Conflict: A Documentary History of the Mormon War in Illinois* (Logan, Utah: Utah State University Press, 1995), 116.

[65] J. Spencer Fluhman, *A Peculiar People: Anti-Mormonism and the Making of Religion in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2012), 97.

[66] Lawrence Foster, "Sex and Conflict in New Religious Movements: A Comparison of the Oneida Community under John Humphrey Noyes and the Early Mormons under Joseph Smith and his Would-Be Successors," *Nova Religio: The Journal of Alternative and Emergent Religions* 13, no. 3 (2010): 42, doi:10.1525/nr.2010.13.3.34.

[67] Hallwas and Launius, *Cultures in Conflict*, 116.

[68] Fluhman, *A Peculiar People*, 98.

[69] Powell, "Utah Territory," 1504-1505.

[70] H. Doc. No. 138, "Cessation of Difficulties in Utah: Message from the President of the United States, Relative to the Probable Termination of Mormon Troubles in Territory of Utah," (June 10, 1858).

[71] Gordon, *The Mormon Question*, 202.

[72] Gary Vitale, "Abraham Lincoln and the Mormons: Another Legacy of Limited Freedom," *Journal of the Illinois State Historical Society* 101, no. 3 (2008): 267-268, http://www.jstor.org/stable/40204739.

[73] W. Paul Reeve, *Religion of a Different Color: Race and the Mormon Struggle for Whiteness* (New York: Oxford University Press, 2015).

[74] Bitton, *The Ritualization of Mormon History,* 35-42.

[75] Van Wagoner, *Mormon Polygamy*, 106-107.

[76] Leonard J. Arrington, "The Deseret Telegraph: A Church-owned Public Utility," *The Journal of Economic History* 11, no. 2 (Spring, 1951): 117.

[77] Arrington, "The Deseret Telegraph: A Church-owned Public Utility," 119.

[78] Leonard J. Arrington, *Brigham Young: American Moses* (Urbana: University of Illinois Press, 1986), 295.

[79] Vitale, "Abraham Lincoln and the Mormons," 268-269.

[80] Sehat, *The Myth of American Religious Freedom*, 169.

[81] Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2002), 111.

[82] Balogh, *A Government Out of Sight*, 13-14.

[83] Van Wagoner, *Mormon Polygamy*, 107.

[84] Todd W. Kerstetter, *God's Country, Uncle Sam's Land: Faith and Conflict in the American West* (Urbana: University of Illinois Press, 2006), 78.

[85] "Utah Commission: Agency History #1249," Utah Department of Administrative Services: Division of Archives & Records Service, last modified June 2, 2009, accessed February 11, 2016, http://archives.utah.gov/research/agencyhistories/1249.html.

[86] Leonard J. Arrington and Davis Bitton, *The Mormon Experience: A History of the Latter-Day Saints* (Chicago: University of Illinois Press, 1992), 181.

[87] James W. Stillman, *The Constitutional and Legal Aspect of the Mormon Question* (Boston: Stillman & Co,, 1882), 4.

[88] Stillman, *The Constitutional and Legal Aspect of the Mormon Question*, 5.

[89] Stillman, *The Constitutional and Legal Aspect of the Mormon Question*, 16.

[90] Charles William Bennett, *To the Senate and House of Representatives, in Congress Assembled: With Profound Respect We Represent: Is the Mormon Problem Understood?* (n.l.: n.p., 1883), 5.

[91] Edward L. Sloan, ed., *Gazeteer of Utah and Salt Lake City Directory, 1874* (Salt Lake City, Utah: "Salt Lake Herald" Pub. Co., c1874), 175; 180.

[92] Bennett, *Is the Mormon Problem Understood?*, 7.

[93] Bennett, *Is the Mormon Problem Understood?*, 7.

[94] Ladies of the Church of Jesus Christ of Latter-day Saints, *'Mormon' Women's Protest: An Appeal for Justice and Equal Rights: Full Account of Proceedings at the Great Mass Meeting* (Salt Lake City: Deseret News Co., 1886).

[95] *American National Biography Online*, s.v. "Bowles, Samuel," by Stephen G. Weisner, accessed February 15, 2016, http://www.anb.org/articles/16/16-00157.html.

[96] Bowles, *Our New West*, 249.

[97] Bowles, *Our New West*, 249.

[98] Bowles, *Our New West*, 250.

[99] Bowles, *Our New West*, 250.

[100] Gordon, *The Mormon* Question, 159.

[101] Arrington and Bitton, *The Mormon Experience*, 181-182.

[102] Arrington and Bitton, *The Mormon Experience*, 182.

[103] Gordon, *The Mormon Question*, 158.

[104] Kimball Young, *Isn't One Wife Enough? The Story of Mormon Polygamy* (New York: Henry Holt and Company, 1954), 396.

[105] Young, *Isn't One Wife Enough?*, 398.

[106] Young, *Isn't One Wife Enough?*, 400-401.

[107] Gordon, *The Mormon Question*, 161-162.

[108] Gordon, *The Mormon Question*, 160.

[109] Catharine Cookson, *Regulating Religion: The Courts and the Free Exercise Clause* (Oxford: Oxford University Press, 2001), 115.

[110] Gordon, *The Mormon Question*, 160.

[111] Fluhman, *A Peculiar People*, 103.

[112] Cookson, *Regulating Religion*, 116.

[113] Gordon, *The Mormon Question*, 181.

[114] John Irvine, '*Mormon' Protest Against Injustice: An Appeal for Constitutional and Religious Liberty; Full Report of the Great Mass Meeting Held in Salt Lake City, May 2, 1885, with the full text of the Speeches and the Protest and Declaration of Grievances* (Salt Lake City: Jos. Hyrum Parry & Co., 1885).

[115] John Doyle Lee, *Mormonism Unveiled; including the Remarkable Life and Confessions of the Late Mormon Bishop, John D. Lee; (Written by Himself) and Complete Life of Brigham Young, Embracing a History of Mormonism from Its Inception Down to the Present Time, with an Exposition of the secret history, signs, symbols, and crimes of the Mormon church; also the true history of the horrible butchery known as the Mountain Meadows Massacre*, William W. Bishop, ed. (St. Louis: M.E. Mason, 1891), 272-273.

[116] Lee, *Mormonism Unveiled*, 158.

[117] Irvine, *'Mormon' Protest Against Injustice*, 23.

[118] Lawrence Foster, *Religion and Sexuality: Three American Communal Experiments of the Nineteenth Century* (New York: Oxford University Press, 1981), 220-223.

[119] Christine Talbot, *Mormons and Polygamy in American Political Culture, 1852-1890* (Urbana: University of Illinois Press, 2013), 104.

[120] Jeffrey Nichols, *Prostitution, Polygamy, and Power: Salt Lake City, 1847-1918* (Urbana: University of Illinois Press, 2002), 12.

[121] Gustive O. Larson, *The 'Americanization' of Utah for Statehood* (San Marino: Huntington Library, 1971).

[122] Editorial, "Latest News," *Lowell Daily Citizen and News*, October 4, 1871, 2.

[123] Editorial, "The Knell of Polygamy–Arrest of Brigham Young–Offences Under the Territorial Laws–Mormon Officials Taught a Severe Lesson," *New York Herald*, October 3, 1871, 9.

[124] Ulysses S. Grant, "President's Message, to the Senate and House of Representatives," *Daily Albany Argus*, December 8, 1875, 3.

[125] Grant, "President's Message," 3.

[126] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest: Its Full Text, and a Report of the Proceedings of the Salt Lake Mass Meeting of May 2nd, 1885: Comments and Review by 'The Tribune'* (Salt Lake City: n.p.,1885), 22.

[127] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*, 23, 45.

[128] The law granted fine and imprisonment to those convicted of polygamy and cohabitation.

[129] H. Exec. Doc. 153, *Special Report of the Utah Commission, made to the Secretary of the Interior, 1884* (Washington, D.C.: G.P.O., 1884), 2.

[130] H. Exec. Doc. 153, *Special Report of the Utah Commission*, 3.

[131] H. Exec. Doc. 153, *Special Report of the Utah Commission*, 3.

[132] H. Exec. Doc. 153, *Special Report of the Utah Commission*, 3-4.

[133] Dyer D. Lum, *Social problems of Today; or, The Mormon question in its economic aspects, a study of co-operation and arbitration in Mormondom, from the standpoint of a wage-worker* (Port Jervis, N.Y.: D. D. Lum & Co., 1886), 39.

[134] Lum, *Social Problems of Today*, 40.

[135] Lum, *Social Problems of Today*, 41.

[136] H. Exec. Doc. 153, *Special Report of the Utah Commission*, 4-5.

[137] Lum, *Social Problems of Today*, 47-48.

[138] Lum, *Social Problems of Today*, 49-50.

[139] H. Exec. Doc. 153, *Special Report of the Utah Commission*, 4.

[140] Frank Hans Brooks, "Anarchism, revolution, and labor in the thought of Dyer D. Lum: 'Events are the true schoolmasters'" (PhD dissertation, Cornell, 1988), 1, http://search.proquest.com.ezproxy.cul.columbia.edu/docview/303698315/fulltextPDF/7C54D864C6B644F8PQ/1?accountid=10226.

[141] Lum, *Social Problems of Today*, 7.

[142] Lum, *Social Problems of Today*, 53.

[143] William O. Walker III, *National Security and Core Values in American History* (New York: Cambridge University Press, 2009), 45.

[144] Gerstle, *Liberty and Coercion*, 64.

[145] Gerstle, *Liberty and Coercion*, 56.

[146] Gerstle, *Liberty and Coercion*, 64-69.

[147] Young, *Isn't One Wife Enough*, 349.

[148] Gordon, *The Mormon Question*, 155.

[149] George Alfred Townsend, *The Mormon Trials at Salt Lake City* (New York: American News Company, 1871).

[150] William Henry Hooper, '*The Utah bill: A plea for religious liberty,' speech of Hon. W. H. Hooper, of Utah, delivered in the House of Representatives, March 23, 1870: together with the remonstrance of the citizens of Salt Lake City, in mass meeting, held March 31, 1870, to the Senate of the United States* (Washington, D.C.: Gibson Bros., printers, 1870).

[151] Hooper, '*The Utah bill: A plea for religious liberty,'* 7.

[152] "Of the Sacraments," *Historical Documents of the Church*, 872, accessed February 8, 2016, http://www.bcponline.org/Misc/histdocs.html.

[153] Bitton, *The Ritualization of Mormon History*, xii.

[154] Hooper, '*The Utah bill: A plea for religious liberty,'* 13.

[155] Hooper, '*The Utah bill: A plea for religious liberty,'* 31.

[156] S. Misc. Doc. 112, *Memorial Adopted by the Citizens of Salt Lake City, Territory of Utah, at a mass meeting held in said city March 31, 1870: remonstrating against the passage of the bill (H. R. No. 1089) "in aid of the execution of the laws in the Territory of Utah, and for other purposes*," (1870), 37.

[157] Gordon, *The Mormon Question*, 156.

[158] Gordon, *The Mormon Question*, 156.

[159] Gordon, *The Mormon Question*, 156.

[160] Townsend, *The Mormon Trials at Salt Lake City*, 17.

[161] Edward Friel v. Lyman S. Wood, Administrator of the Estate of Lambson, Deceased, 1 Utah 160 (1874).

[162] The cases are as follows: 1. *Reynolds v. United States*, 98 United States 145 (1878); 2. *Miles v. United States*, 103 U.S. 304 (1880); 3. *Clawson v. United States*, 113 United States 143 (1885) and 114 United States 477 (1885); 4. *Murphy v. Ramsey*, 114 United States 15 (1885); 5. *Cannon v. United States*, 116 United States 55 (1885); 6. *Snow v. United States*, 118 United States 346 (1886); 7. *In re Snow*, 120 United States 274 (1887); 8. *Cannon v. United States*, 118 United States 355 (1886); 9. *Ex parte Hans Nielsen*, 131 United States 176 (1889); 10. *Bassett v. United States*, 137 United States 496 (1890); 11. *Davis v. Beason*, 133 United States 333 (1890); and 12. *Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 United States 1 (1890).

[163] Sarah Barringer Gordon, *The Spirit of the Law: Religious Voices and the Constitution in Modern America* (Cambridge: The Belknap Press of Harvard University Press, 2010), 181, citing *Jones v. Hallahan*, 501 S.W. 2d 590 (Kentucky 1973), citing *Reynolds*.

[164] Balogh, *A Government Out of Sight,* 14.

[165] Balogh, *A Government Out of Sight*, 184.

[166] Kathryn M. Daynes, *More Wives Than One: Transformation of the Mormon Marriage System, 1840–1910* (Urbana: University of Illinois Press, 2001), 47.

[167] Sehat, *The Myth of American Religious Freedom*, 170.

[168] *American National Biography Online*, s.v. "Baird, Robert," by Henry Warner Bowden, accessed April 2, 2016, http://www.anb.org/articles/08/08-00077.html.

[169] Sehat, *The Myth of American Religious Freedom*, 170.

[170] United States v. George Reynolds, 1 Utah 226 (1875).

[171] Reynolds v. United States, 98 U.S. 145 (1878).

[172] Reynolds v. United States*,* 98 U.S. 145 (1878).

[173] Reynolds v. United States, 98 U.S. 145 (1878), Brief for Plaintiff-in-Error (1878): 6, Filed October 2, 1876, Accessed February 5, 2015, *United States Supreme Court Records and Briefs, 1832-1978*, Gale, Cengage Learning, Columbia University, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW108798532.

[174] Reynolds v. United States, 98 U.S. 145 (1878), Transcript of Record (1878): 11, Filed October 4, 1876, Accessed February 9, 2015, *United States Supreme Court Records and Briefs, 1832-1978*, Gale, Cengage Learning, Columbia University, http://galenet.galegroup.com.ezproxy.cul.columbia.edu/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW108781656.

[175] Reynolds v. United States, 98 U.S. 145 (1878).

[176] Cookson, *Regulating Religion*, 7-9.

[177] Foster, *Religion and Sexuality*, 223.

[178] Daynes, *More Wives Than One*, 48.

[179] Cookson, *Regulating Religion*, 116.

[180] Gordon, *The Mormon Question*, 121-122.

[181] Fluhman, *A Peculiar People*, 104.

[182] Fluhman, *A Peculiar People*, 104.

[183] Bitton, *The Ritualization of Mormon History*, 41.

[184] Fluhman, *A Peculiar People*, 16.

[185] E. Digby Baltzell, *The Protestant Establishment: Aristocracy & Caste in America* (New Haven: Yale University Press, 1964).

[186] Baltzell, *The Protestant Establishment*, 8.

[187] Gordon, *The Mormon Question*, 142.

[188] Gordon, *The Mormon Question*, 142.

[189] Fluhman, *A Peculiar People*, 13.

[190] Foster, *Religion and Sexuality*, 221.

[191] J. Horatio Nichols, *Marriage: Monogamy and Polygamy on the Basis of Divine Law, of Natural Law, and of Constitutional Law: An Open Letter to the Massachusetts Members of Congress, by one of their Constituents, with Observations on the Opinion of the Supreme Court in Reynolds vs. United States, 98 United States Supreme Court Reports, by a Citizen of Massachusetts* (Boston: James Campbell, 1882), 9.

[192] Nichols, *Marriage*, 14.

[193] Nichols, *Marriage*, 14.

[194] Nichols, Marriage, 12-13.

[195] Nichols, *Marriage*, 32.

[196] Nichols, *Marriage*, 35.

[197] Nichols, *Marriage*, 43.

[198] Nichols, *Marriage*, 43-44.

[199] Nichols, *Marriage*, 44-45.

[200] Miles v. United States, 103 U.S. 304 (1881).

[201] United States v. John H. Miles, 2 Utah 19 (1877), 21.

[202] Miles v. United States, 103 U.S. 304 (1880), Transcript of Record (1880): 6, Filed October 13, 1879, Accessed February 5, 2015, *United States Supreme Court Records and Briefs, 1832-1978,* Gale, Cengage Learning, Columbia University, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW109297361.

[203] Miles v. United States, 103 U.S. 304*,* Transcript of Record, 8.

[204] Miles v. United States, 103 U.S. 304, Transcript of Record, 14.

[205] Miles v. United States, 103 U.S. 304, Transcript of Record, 106.

[206] United States v. John H. Miles, 22.

[207] Miles v. United States, 103 U.S. 304, Transcript of Record, 14.

[208] Miles v. United States, 103 U.S. 304, Transcript of Record, 20.

[209] Miles v. United States, 103 U.S. 304, Transcript of Record, 23.

[210] Miles v. United States, 103 U.S. 304, Transcript of Record, 26.

[211] Miles v. United States, 103 U.S. 304, Transcript of Record, 47.

[212] Miles v. United States, 103 U.S. 304, Transcript of Record, 50.

[213] Miles v. United States, 103 U.S. 304, Transcript of Record, 73-74.

[214] United States v. John H. Miles, 24.

[215] United States v. John H. Miles, 24.

[216] United States v. John H. Miles, 26.

[217] United States v. John H. Miles, 29-30.

[218] Miles v. United States, 103 U.S. 304, Transcript of Record, 41.

[219] Miles v. United States, 103 U.S. 304, Transcript of Record, 41-47.

[220] United States v. John H. Miles, 28.

[221] United States v. John H. Miles, 26-27.

[222] United States v. John H. Miles, 28.

[223] United States v. John H. Miles, 28-29.

[224] United States, v. Thomas Simpson, 4 Utah 227 (1885), 230.

[225] United States v. James Smith, Utah Supreme Court (1887), 234.

[226] Utah Comp. Laws § 1604

[227] Miles v. United States, 103 U.S. 304, Transcript of Record, 114.

[228] Edward L. Sloan, ed., *Gazeteer of Utah and Salt Lake City Directory, 1874* (Salt Lake City, Utah: "Salt Lake Herald" Pub. Co., c1874), 175; 180.

[229] Bennett, *Is the Mormon Problem Understood?*.

[230] Robert W. Sloan, ed., *Utah Gazetteer and Directory of Logan, Ogden, Provo and Salt Lake Cities for 1884* (Salt Lake City, Utah: Herald Printing and Publishing Company, 1884), 228.

[231] Bennett, *Is the Mormon Problem Understood?*, 1.

[232] Bennett, *Is the Mormon Problem Understood?*, 1.

[233] Bennett, *Is the Mormon Problem Understood?*, 2.

[234] Fluhman, *A Peculiar People*, 125.

[235] Bennett, *Is the Mormon Problem Understood?*, 2.

[236] Bennett, *Is the Mormon Problem Understood?*, 2-3.

[237] Bennett, *Is the Mormon Problem Understood?*, 3.

[238] Bennett, *Is the Mormon Problem Understood?*, 3.

[239] Bennett, *Is the Mormon Problem Understood?*, 4.

[240] Bennett, *Is the Mormon Problem Understood?*, 4

[241] Bennett, *Is the Mormon Problem Understood?*, 4-5.

[242] Bennett, *Is the Mormon Problem Understood?*, 5.

[243] Bennett, *Is the Mormon Problem Understood?*, 10.

[244] Bennett, *Is the Mormon Problem Understood?*, 11.

[245] Bennett, *Is the Mormon Problem Understood?*, 11-12.

[246] Clawson v. United States, 113 U.S. 143 (1885).

[247] Clawson v. United States, 113 U.S. 143 (1885), Transcript of Record (1884): 4, Filed February 5, 1885, Accessed February 14, 2015, *United States Supreme Court Records and Briefs, 1832-1978*, Gale, Cengage Learning, Columbia University, http://galenet.galegroup.com.ezproxy.cul.columbia.edu/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW108129751.

[248] Act of March 22, 1882, 22 Stat. 30 (1882).

[249] Salt Lake Review, "Grand Jurors and Polygamy," *The Albany Law Journal: A Weekly Record of the Law and the Lawyers (1870-1908)* (1871): 194, http://ezproxy.cul.columbia.edu/login?url=http://search.proquest.com.ezproxy.cul.columbia.edu/docview/124863157?accountid=10226.

[250] Gordon, *The Mormon Question*, 156-157.

[251] Murphy v. Ramsey, 114 U.S. 15 (1885).

[252] Murphy v. Ramsey, 114 U.S. 15 (1885), Transcript of Record (1884): 6-7, Filed October 9, 1884, Accessed February 12, 2015, *United States Supreme Court Records and Briefs, 1832-1978*, Gale, Cengage Learning, Columbia University, http://galenet.galegroup.com.ezproxy.cul.columbia.edu/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW108386230.

[253] Act of March 22, 1882, 22 Stat. 30 (1882).

[254] Van Wagoner, *Mormon Polygamy*, 123.

[255] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*.

[256] Van Wagoner, *Mormon Polygamy*, 123.

[257] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*, 1.

[258] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*, 11.

[259] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*, 12.

[260] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*, 12.

[261] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*, 12-13.

[262] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*, 17.

[263] Church of the Jesus Christ of Latter-day Saints, *The Mormon Protest*, 18-19.

[264] Joseph Nimmo Jr., "Hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives as to the Wisdom and Advisability of Conferring on the Interstate Commerce Commission the Authority to Prepare Schedules and to Make Railroad Rates," 57th Cong. 1 (1902). http://congressional.proquest.com.ezproxy.cul.columbia.edu/congressional/docview/t29.d30.hrg-1902-fch-0006?accountid=10226.

[265] Joseph Nimmo, *The Mormon Usurpation: An Open Letter Addressed to the Committee on the Judiciary of the House of Representatives* (Huntington, Long Island: "The Long-Islander" Print., 1886), 1.

[266] Nimmo, "The Mormon Usurpation," 1.

[267] Nimmo, "The Mormon Usurpation," 1.

[268] Nimmo., "The Mormon Usurpation," 16-17.

[269] United States v. Lorenzo Snow, 4 Utah 313 (1886), 283.

[270] United States v. Lorenzo Snow,, 284.

[271] United States v. Lorenzo Snow, 284.

[272] United States v. Lorenzo Snow, 284.

[273] Snow v. United States, 118 U.S. 346 (1886), Transcript of Record (1885): 18, Filed March 2, 1886, Accessed February 14, 2015, *United States Supreme Court Records and Briefs, 1832-1978*, Gale, Cengage Learning, Columbia University, http://galenet.galegroup.com.ezproxy.cul.columbia.edu/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW108137724.

[274] United States v. Lorenzo Snow, 285.

[275] United States v. Lorenzo Snow, 4 Utah 280 (1886), 289.

[276] United States v. Lorenzo Snow, 2.

[277] Snow v. United States, 118 U.S. 346 (1886), Transcript of Record, 25.

[278] Snow v. United States, 118 U.S. 346 (1886), Transcript of Record, 26.

[279] Snow v. United States, 118 U.S. 346 (1886), Transcript of Record, 27.

[280] Snow v. United States, 118 U.S. 346 (1886), Transcript of Record, 26.

[281] United States v. Lorenzo Snow, 4 Utah 313 (1886), 314.

[282] United States v. Lorenzo Snow, 316.

[283] United States v. Lorenzo Snow, 314.

[284] George Ticknor Curtis, "A Plea for Religious Liberty and the Rights of Conscience: An argument delivered in the Supreme Court of the United States, April 28, 1886, in three cases of Lorenzo Snow, plaintiff in error, v. The United States, on writs of error to the Utah Supreme Court Territory" (Washington, D.C.: Gibson Bros., 1886).

[285] *American National Biography Online*, s.v. "Curtis, George Ticknor," by Mark V. Tushnet, accessed February 15, 2016, http://www.anb.org/articles/11/11-00953.html.

[286] Richard Frank Calhoun, "George Ticknor Curtis: Nineteenth Century Constitutional Historian and Publicist" (PhD dissertation, University of Maryland College Park, 2001), 58.

[287] "Curtis on Polygamy," *The Washington Post,* November 22, 1886, http://ezproxy.cul.columbia.edu/login?url=http://search.proquest.com.ezproxy.cul.columbia.edu/docview/138004083?accountid=10226.

[288] "A New View of the Mormons," *The Atlanta Constitution*, January 4, 1888, http://search.proquest.com.ezproxy.cul.columbia.edu/docview/495179446?OpenUrlRefId=info:xri/sid:summon&accountid=10226.

[289] Curtis, "A Plea for Religious Liberty and the Rights of Conscience," 8.

[290] Curtis, "A Plea for Religious Liberty and the Rights of Conscience," 10.

[291] Curtis, "A Plea for Religious Liberty and the Rights of Conscience," 16.

[292] Curtis, "A Plea for Religious Liberty and the Rights of Conscience," 16.

[293] Curtis, "A Plea for Religious Liberty and the Rights of Conscience," 16.

[294] Snow v. United States, 118 U.S. 346 (1886), Transcript of Record, 3.

[295] Snow v. United States, 118 U.S. 346 (1886), Transcript of Record.

[296] United States v. A. Milton Musser, 4 Utah 153 (1885).

[297] Van Wagoner, *Mormon Polygamy*, 120.

[298] Lum, *Social Problems of Today*, 72.

[299] Lum, *Social Problems of Today*, 72.

[300] United States v. A. Milton Musser, 157-158.

[301] United States v. A. Milton Musser, 174.

[302] United States v. A. Milton Musser, 170.

[303] Curtis, "A plea for religious liberty and the rights of conscience," 22.

[304] Curtis, "A plea for religious liberty and the rights of conscience," 27.

[305] Eugene Hale, *Polygamy: The Work of the Industrial Christian Home Association of Territory of Utah* (Washington. D.C.: 1888), 4.

[306] S. Misc. Doc. 201, *In the Senate of the United States, Presented by Mr. Edmunds, referred to the Committee on Territories, and ordered to be printed. Memorial of Mrs. Angie F. Newman, remonstrating against the admission of Territory of Utah into the Union as a state so long as the administration of the affairs of that territory continues in the hands of the Mormon priesthood* (1888), 6

[307] S. Misc. Doc. 201, *In the Senate of the United States,* 8.

[308] Gordon, *The Mormon Question*, 26.

[309] James O. Broadhead, "The United States vs. the Corporation of the Church of Jesus Christ of Latter-Day Saints / Wilford Woodruff, et. al.," October 20, 1887, 2.

[310] Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States, 136 U.S. 1 (1890), Transcript of Record (1889): 2, Filed October 26, 1888, Accessed February 14, 2015, *United States Supreme Court Records and Briefs, 1832-1978*, Gale, Cengage Learning, Columbia University, http://galenet.galegroup.com.ezproxy.cul.columbia.edu/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW108045743.

[311] Late Corporation of the Church of Latter-day Saints v. United States, 49.

[312] Abdullahi Ahmed An-Na'im, *What is an American Muslim? Embracing Faith and Citizenship* (Oxford: Oxford University Press, 2014), 60.

[313] *Utah Statehood: Reasons why it should not be granted. Will the American people surrender the territory to an unscrupulous and polygamous theocracy?* (Salt Lake City: Tribune Print, 1887), 16.

[314] George Ticknor Curtis, "The Admission of Utah," *New York Tribune*, December 29, 1893, http://search.proquest.com.ezproxy.cul.columbia.edu/docview/573860725?OpenUrlRefId=info:xri/sid:summon&accountid=10226.

[315] "A Summer Jaunt Through the Territories of Utah and Idaho—Among the Mormons—The Temple," *Plain Dealer* (1886): 13.

[316] S. Misc. Doc. 201.

[317] S. Misc. Doc. 201, 1.

[318] S. Misc. Doc. 201, 6.

[319] S. Misc. Doc. 201, 8.

[320] *The Admission of Utah,* January 19-22, *Before the House Committee on Territories*, 50th Cong. 2 (1889) (argument of Jeremiah M. Wilson), 3.

[321] *The Admission of Utah*, 8.

[322] *The Admission of Utah*, 8.

[323] John Gary Maxwell, *Robert Newton Baskin and the Making of Modern Utah* (Norman, Oklahoma: University of Oklahoma Press, 2013).

[324] *The Admission of Utah*, 17.

[325] *The Admission of Utah*, 19.

[326] *The Admission of Utah*, 21.

[327] *The Admission of Utah*, 24.

[328] *The Admission of Utah*, 29.

[329] *The Admission of Utah*, 17.

[330] *The Admission of Utah*, 29-30.

[331] *The Admission of Utah*, 29-30.

[332] *Notes of a Hearing on Bill (H.R. 524) 'For the Local Government of Territory of Utah and To Provide for the Election of Certain Officers in Said Territories',* Feb. 10, 16, 17, 19, 20, *Before the Committee on the Territories*, 52nd Cong. 1 (1892), 1.

[333] "John W. Judd," in "History Of The District of Utah's U.S. Attorney's Office," Mar. 13, 2015, accessed Feb. 22, 2016, http://www.justice.gov/usao-ut/history.

[334] *Notes of a Hearing on Bill (H.R. 524)*, 10.

[335] *Notes of a Hearing on Bill (H.R. 524)*, 11.

[336] *Notes of a Hearing on Bill (H.R. 524)*, 2-3.

[337] *Notes of a Hearing on Bill (H.R. 524)*, 66.

[338] *Notes of a Hearing on Bill (H.R. 524)*, 68.

[339] *Notes of a Hearing on Bill (H.R. 524)*, 4.

[340] Claudia Lauper Bushman and Richard Lyman Bushman, *Building the Kingdom: A History of Mormons in America* (New York: Oxford University Press, 2001), 76.

[341] Bushman and Bushman, *Building the Kingdom*, 76.

[342] Rabban, *Free Speech in Its Forgotten Years*, 52.

[343] League for Social Service, "Reasons why Brigham H. Roberts should be expelled from the United States Congress," (New York City: League for Social Service, 1898), 4.

[344] League for Social Service, "Reasons why Brigham H. Roberts should be expelled from the United States Congress," 4.

[345] League for Social Service, "Reasons why Brigham H. Roberts should be expelled from the United States Congress," 9.

[346] League for Social Service, "Reasons why Brigham H. Roberts should be expelled from the United States Congress," 9-10.

[347] Brudnoy, "Liberty's Bugler," 25.

[348] Kathleen Flake, *The Politics of American Religious Identity: The Seating of Senator Reed Smoot, Mormon Apostle* (Chapel Hill: The University of North Carolina Press, 2004), 2.

[349] Elder B. H. Roberts, *Recent Discussion of Mormon Affairs: Answer to the Ministerial Association's Review of 'An Address to the World' by the First Presidency of the Church of Jesus Christ of Latter-Day Saints* (n.l.: n.pl, 1907).

[350] Benjamin Erastus Rich, "Are the Mormons Loyal to the Government? A Rejected Manuscript: An Answer to a Charge Which Appeared in *Pearson's Magazine*" (New York.: Eastern States Mission, Church of Jesus Christ of Latter-Day Saints., c. 1910), 1-2.

Chapter 3. The Quakers of the AFSC: Regulating Communism in the Cold War Era

"As, drawer by drawer, the files of the Federal Bureau of Investigation are pried open by the Freedom of Information Act, the truly formidable capacity of the agency to sense subversion in the seemingly most honorable segments of American society is gradually unfolding. Paranoia on this scale has a certain grandeur; and if it were not that a number of good people were hurt and that we all paid for it in our taxes, John Edgar Hoover's crusade of panic against treason might well be the jest of the century. Attend now to the proposition that the Quakers required vigilant surveillance."[351] — The Editors of *The Nation* (March 11, 1978)

## I. Introduction

The American Friends Service Committee (AFSC), originally called the Friends National Service Committee, was formed by Quakers in Philadelphia in 1917 in the throes of the First World War. Its goal was to provide conscientious objectors with service opportunities and to assist with the war-related struggles of European nations. The first gathering showed its proclivity for reconciling viewpoints among diverse Friends.[352] The organization soon expanded to provide relief to communities in war or conflict zones in the United States and abroad, including by feeding the hungry and supporting immigrant and refugee communities. The American Friends Service Committee is incorporated as a charity in Pennsylvania and is classified by the Internal Revenue Service as a tax-deductible "association of churches." From the early to the mid-twentieth century, the Federal Bureau of Information (FBI), led by J. Edgar Hoover, suspected AFSC members of associating with communists through their humanitarian projects, predominantly during the Cold War period.

From 1976 to 1980, through Freedom of Information Act (FOIA) requests, the AFSC received its FBI files dating from 1921 to the early 1970s. The FBI collected some information on the AFSC from other government agencies but predominantly gathered its own intelligence through FBI agents and informants. Both the FBI and the AFSC underwent organizational transformations in the mid-twentieth century that affected the outcome of the FBI surveillance program. The FBI tried to understand the extent to which Quaker beliefs shaped the actions of the American Friends Service Committee.

Beginning in 1956, a comprehensive FBI Counterintelligence Program (COINTELPRO) instructed FBI agents to surveil subversive individuals and groups, including the American Friends Service Committee. A group of anonymous activists publicly exposed COINTELPRO in 1971 by breaking into an FBI office in Media, Pennsylvania, and releasing incriminating files. William C. Davidon, a peace activist and professor of mathematics and physics at Haverford College, led the break-in. His wife, Ann Morrissett Davidon, a writer, editor, peace activist, and AFSC volunteer, archived and annotated many of the FBI files on the AFSC. Neither of the Davidons held a religious affiliation. Yet they worked closely with Quaker and Catholic activist organizations, motivated by their commitment to peace and social justice.[353] Ann Davidon succinctly conveyed the revelation that AFSC Quakers were under surveillance with her headline for *The Nation*, "Even the Quakers Scared the FBI."[354] The exposure of COINTELPRO, in the end, merely prompted the FBI to refine its objective for surveillance.[355]

These FBI files nonetheless merited close examination. They comprise the backbone of this chapter, which examines how the FBI surveilled the AFSC in the late 1940s to the early 1960s. J. Edgar Hoover, Director of the FBI from 1924 to 1972, sought unlimited power to

identify and prosecute political dissenters. He would have to wait until the Cold War, however, as the FBI only acquired the capacity, and not the authority, to detect radicalism in the 1920s. FBI agents struggled to determine the legitimacy of surveilling the group, in particular, by ascertaining whether the AFSC was a Quaker organization. Mid-twentieth-century Quakers were part of a minority Protestant pacifist culture that contained elements of both insider Protestant influence, as marked by influential Quaker leaders, as well as outsider resistance to the mainstream Protestant establishment.[356] Consequently, in contrast to the surveilled Mormons of the previous chapter, the FBI was constrained by its attempt to respect the religious expression of a high-status Quaker organization, home to influential members of society, as well as by the rise of civil liberties following the First World War. Much like the Mormons, neither the public nor the Quakers themselves unanimously viewed the Society of Friends as Protestant. As a result, the high status, insider community of the Quakers commanded careful consideration from the FBI. The AFSC saw other Protestant communities as allies, but it faced scrutiny from Protestants within the peace community, such as the Brethrens, who tended to avoid politics; the Mennonites; and other Protestant adherents of the Social Gospel who participated in reform activities.[357] The FBI tried to distinguish between religious expression and threatening action when surveilling the AFSC.

The Mormon and Quaker case studies featured government officials who contemplated the ramifications of citizens practicing polygamy and pacifism, respectively. However, as demonstrated in the previous chapter by the 1879 *Reynolds* decision on polygamy, the United States Supreme Court for the first time defined and applied the free exercise clause of the United States Constitution. More specifically, the decision protected polygamy as a religious belief, but

not as an action.[358] As legal scholar Paul Baumgardner has written, "*Reynolds v. United States* stands as the most influential First Amendment free exercise case of the nineteenth-century, setting precedents and legal groundwork for many religion cases in the twentieth-century."[359] In the decades immediately following *Reynolds*, there was little activity in the Court on free exercise since there were few federal religious rights cases. Until the 1940s, most church-state issues emerged in state cases, but they did not invoke the free exercise clause. The Supreme Court cited *Reynolds* and incorporated the free exercise clause in *Cantrell v. Connecticut* (1940). The incorporation allowed the clause to be subsequently applied to state and local action. The case mentioned in chapter one, *Sherbet v. Verner* (1963), which defended a Seventh-Day Adventist's religious belief to not work on Saturdays, was one of the first cases to substantively alter the *Reynolds* rendering on the free exercise clause.[360]

The free exercise clause was already legally defined when the FBI began surveilling the AFSC in 1921. Yet the FBI struggled with how to craft a policy for surveilling the AFSC using that definition. Allan W. Austin has emphasized Quakers' proclivity for "translating belief into practice,"[361] a commitment that remains central to the AFSC to this day. FBI surveillance of the AFSC, despite this precaution, revealed preexisting rifts among American Quakers, including their stance on United States foreign policy during the Cold War. The FBI stored letters from skeptical Quakers who offered alleged evidence of communist ties within the AFSC. Quakers were varied in their opinions on social issues, and in fact, "[m]any American Friends did not like or trust each other."[362] A handful of Quakers dissented against the status quo of mainstream culture: "[T]he underlying challenge of Quakerism–a call to remain in the world and practice what Christ preached–ensured that a certain percentage of each generation would oppose any

tendency to turn the Society of Friends into just another self-perpetuating synonym for 'status quo.'"[363]

As early as the 1960s, some Friends became uncomfortable with what they perceived as leftist politics driving AFSC actions and alliances with people whom they deemed questionable.[364] They believed the AFSC should remain "a community of holy individuals" committed to peace and opposed to hostile aggression.[365] The anticommunist campaign sweeping the nation during the Cold War caused such Quakers, who already disagreed with these leftist, aggressive inclinations, to reconsider the AFSC.[366] In its surveillance of the AFSC, the FBI observed this growing divide in the broader Quaker community between those who advocated stronger radical action at home and abroad, and those who insisted that passivity best reflected Quaker pacifism. This divide was made evident to FBI agents through Quaker citizen letters from throughout the nation questioning whether the AFSC was in fact free from communist influence.

FBI surveillance did not cause this rift in the American Friends Service Committee. But the exposure of the surveillance program confirmed what AFSC leaders suspected, that passive resistance to domestic and foreign conflicts would not achieve their organizational goals. Instead, they needed to include non-Quaker employees committed to social justice who were less resistant to aggressive radicalism that might conflict with Quaker pacifism. These non-Quaker employees who worked with the AFSC for longer periods helped to create continuity within the organization. The remaining Quakers in the organization were particularly liberal, perceiving other Quakers to have reneged on their organizational and theological commitment to social justice.

This shift in demographics subtly transformed the AFSC from a Quaker organization to one that operated on Quaker principles. It also caused a wave of confusion among the FBI about the authenticity of its Quaker roots. The increasingly non-Quaker AFSC paralleled the gradual erosion of Quaker uniformity experienced by the Society of Friends. As noted in the first chapter, Quakers were among the Protestant groups "destined to maintain a separate identity" from the Protestant establishment.[367] Their message, attractive to converts and outsiders, boosted the authority of the group in a short-term period, but eroded its collective solidarity over time.

Organizational histories of the AFSC are limited. Swarthmore religion professor J. William Frost examined the creation of the ASFC and its work prior to 1924 (1992); Lester M. Jones's *Quakers in Action* (1929) focused on AFSC work abroad from 1917 to 1927; while Mary Hoxie Jones's *Swords into Ploughshares* (1937), written from the perspective of an AFSC insider, lacked critical analysis and relied on fictional characters.[368] J. William Frost amusingly recounted on choosing his research topic of the AFSC: "When I first announced that my next topic for research was the American Friends Service Committee, one of my Swarthmore College colleagues exclaimed, 'That will be comparable to working on apple pie, or motherhood. Who could criticize the Service Committee?' Well, now we know that apple pies are full of saturated fats and cholesterol, and motherhood should not be every woman's destiny."[369] Additional publications about the AFSC were either published too early to be relevant to the domestic threats of the AFSC in the postwar period, or were written in such a way that raised questions about objectivity. Such texts include Marvin R. Weisbord's stories of the AFSC at home and abroad,[370] John Forbes's account of AFSC negotiations with several governments,[371] and an autobiography of Clarence E. Pickett, executive secretary of the AFSC, focusing on his

individual work for the Committee from 1929 to 1952.[372] The CIA closely watched Clarence Pickett, who helped to protect Japanese Americans and other foreign-born Americans during the Second World War. Pickett tried to mitigate tensions between the United States and Soviet Union during the Cold War. Allan W. Austin wrote in his monograph on interracial activism that "AFSC staffers chose to work within society, inviting a constant struggle to protect and maintain their faith while facing challenges from the secular context in which they operated."[373] This statement held true for the surveilled AFSC members, who sought to aid those in need in the spirit of Quakerism, regardless of the political implications of doing so.

But the American Friends Service Committee also distanced itself from a purely Quaker identity in order to execute radical projects. The organization did not self-identify as a purely Quaker organization in its promotional materials, but it also did not conceal its Quaker inspirations for activism in a 1979 news release following the FBI surveillance revelation: "The AFSC is supported by people of different faiths who care about peace, social justice and humanitarian service. Its work is based on a profound Quaker belief in the dignity and worth of every person, and a faith in the power of love and nonviolence to bring about change."[374] The FBI, in turn, struggled to determine whether the AFSC based its actions on Quaker principles.

**II. The Tension Between Secrecy and Transparency**

The AFSC claimed in a 1955 publication, *Speak Truth to Power*, that the Cold War national security state was undermining democracy, and that social, political, and economic reform would restore democracy and eliminate violence in the United States.[375] The AFSC, in turn, was becoming adept at circumventing bureaucratic barriers and negotiating with foreign governments in the postwar period.[376] H. Larry Ingle has suggested that the inclusion of non-

Quaker employees in the AFSC during the postwar period "gradually imperiled the Quakerism at its base and recast it as just one more pressure group within the secular political community."[377]

When J. Edgar Hoover became in charge of what would later become the FBI in 1924, he was told by Harlan Fiske Stone, the attorney general and former Columbia Law School dean who had appointed him, to investigate people's actions rather than their opinions.[378] Hoover systematically built the foundation for his surveillance system by creating what he considered professional experts rather than amateur enthusiasts, ironically paralleling the professionalization of the AFSC through hiring long-term employees over temporary volunteers. Hoover believed the FBI, and government agencies more broadly, needed centralized authority from its directors.[379] As Gary Gerstle has argued, this vision of Hoover's broke from an eighteenth-century vision of a liberal central state that was limited in authority, as well as from the nineteenth-century use of private organizations as government auxiliaries to compensate for a weaker central state.[380]

Before J. Edgar Hoover consolidated power within the FBI in the Cold War period, many requests for information about the AFSC from the 1920s to the early 1950s came from local citizens and FBI agents. Hoover often denied requests for information from citizens. He reassured them that the AFSC was a "committee of the Quaker faith," built to engage in peace and relief efforts at home and abroad.[381] In the late 1950s and the 1960s, FBI agents began to systematically surveil the AFSC by reporting on meetings, demonstrations, and vigils against Vietnam that AFSC members attended or organized.

The growth of the national security state was of course not solely propelled by J. Edgar Hoover. During the Second World War, the FBI had used the 1940 Alien Registration Act, which

criminalized speech advocating for the overthrow of government, to prosecute Axis-sympathizing aliens, and by the late 1940s, to prosecute American communists. Hoover received "peacetime" authority and funds following the 1947 National Security Act, which merged the War and Navy Departments into the National Military Establishment (NME) and created the Joint Chief of Staff to improve coordination between branches of armed services, the National Security Council (NSC), and the Central Intelligence Agency (CIA). By 1949, the annual appropriation of the FBI exceeded its height during the Second World War, and by 1959, its annual funding had doubled.

In response to the growing national security state, many Americans worried the United States would turn into a "garrison state" in which people's liberties were curtailed. They feared they would lose the ideological Cold War even if the United States defeated the Soviet Union.[382] By the time President Eisenhower left office, he pointed to the military establishment and arms industry as "new in the American experience," referring to how the constant state of war protected parts of the central state from review and accountability.[383] Gary Gerstle has highlighted this paradox permeating the war-ridden twentieth-century United States, in which the judicial and executive branches expanded civil rights and liberties, but the national security agenda increased surveillance and secrecy.[384]

This rise of civil liberties following the First World War shaped and constrained the environment in which J. Edgar Hoover's assumed his leadership position in the FBI.[385] Prior to the ending of the First World War, the Espionage Act of 1917 had outlawed interfering with the draft and producing false statements that could hinder the success of the United States military.

Woodrow Wilson suppressed any dissent at home that might stifle democracy and freedom abroad. Thousands of radicals were arrested and deported during the 1919–1920 Red Scare.[386]

As a response to this political environment, Americans sought legal protections of speech against state repression. Two Supreme Court cases about speaking freely on communism and anti-Semitism initiated the transformation of free speech rights that would continue through the 1960s. The courts carved out a sphere of individual rights and private lives, untouched by state and federal governments. The lawyer and later Supreme Court justice, Louis Brandeis, pioneered this movement. In 1920, the American Civil Liberties Union (ACLU) was renamed from the 1917 Civil Liberties Bureau.[387] The ACLU tackled cases on the freedom of speech, press, and eventually the newly developed right to privacy, while the Supreme Court continued to determine the limits of dissent in the nation.[388] Civil liberties, in sum, became a conceptual norm.

The rise of civil liberties following the First World War was later augmented by what sociologist Michael Schudson has characterized as the "right to know" following the Second World War. From the late 1950s to the 1970s, the demand for government accountability permeated different facets of public life, including the mass media, think tanks, and nongovernmental organizations. Congress curtailed excessive executive power through the Freedom of Information Act (FOIA), which permitted the AFSC to request files from the FBI and other intelligence agencies.[389] The man behind the Freedom of Information Act was a Democratic congressman, John Moss, who "appealed to the language of the Cold War" on behalf of Congress and the general public.[390] The right to know was not evident in the founders' intent for the nation, according to Schudson: "[N]owhere did the framers say or imply that 'being informed' meant that citizens should be able to demand information from those serving in

government."[391] The founders certainly believed that citizens needed to be informed to contribute to a well-functioning republic, but on the terms that they dictated and shaped for the citizenry.[392]

Approved by Congress and then signed into law by President Lyndon Johnson in 1966, FOIA clarified the ambiguous stance of the Administrative Procedure Act of 1946 (APA) on the disclosure of government information to the public. All governmental bodies had to answer to FOIA, with the exception of Congress, the courts, the president, and the president's advisors. FOIA made government agency documents promptly available to people who cited a "reasonable" need for the requested information and properly submitted the request. An executive agency became entitled to nine exemptions to deny a given request, including when information was deemed secret for the sake of national defense or foreign policy.[393]

J. Edgar Hoover, despite the rise of civil liberties and culture of transparency that accompanied his tenure as Director of the FBI, concealed that the FBI was spying on the AFSC and other organizations marked as communist-infiltrated. Even in 1973, after Hoover's term had ended, the FBI broke into various organizations in the greater area of Washington, D.C., including the Washington Peace Center, Quaker House, and Friends Meeting House.[394] The AFSC was surveilled by city police departments that often relied on citizen letters and undercover informants for their information. Informants to local FBI offices throughout the country provided intelligence on the AFSC, while undercover agents observed and reported on AFSC-related gatherings.[395]

A member of the Air Force cited Army information to imply that the AFSC had been "unwittingly" used by the Communist Party as a "semi-front organization."[396] One informant wrote to the FBI in 1966 that the AFSC was "definitely a red front" used by the Communist

Party to resist the United States military. This person was a Quaker who claimed to speak on behalf of the Five Year Meeting of Friends, denouncing the AFSC as a leftist group that used "Biblical and Quaker quotations" to justify anti-United States government and pro-communist views. The informant accused the AFSC of collecting the majority of its funds from "red supporters" rather than Quakers, and without providing any evidence, accused AFSC figureheads of being duped into supporting communism.[397] While AFSC leaders did not admit to espousing communist views, they might not have been offended by being labeled "leftist," as there was certainly a range of both conservative and liberal Quakers in the United States at this time. Although FBI agents surveilled AFSC gatherings firsthand and often demonstrated a concerted effort to provide an objective account of the Quaker group in the files, the consistent filing of citizen letters resembled the use of citizen testimonies to convict Mormon polygamists in the Utah Territory. While anonymous citizen letters did not appear in the Mormon case, polygamists faced similar accusations through testimonies against them at their trials from individuals they may have not known or known well.

**III. Crafting a Public Image**

Not long after its formation in 1917, the AFSC scheduled talks with members of Congress and other peace-oriented churches, planned trips to France and Russia, and established a training camp at Haverford College in Haverford, Pennsylvania. Despite these high-profile associations, one Quaker sociology professor had written of the original members of the AFSC, "It was not a group distinguished for wealth, political power, or social prestige. It was, however, a strong group, and particularly so after the committee was enlarged and made representative of the various groups of American Friends."[398] The AFSC would, nonetheless, amass social prestige

through the twentieth century, gradually recruiting college-educated Friends to increase its numbers. AFSC members made important contacts with government officials, such as Woodrow Wilson; Attorney General A. Mitchell Palmer; Grayson Murphy, Chief of the American Red Cross in France; and Herbert Hoover, a Quaker raised, "birthright Friend,"[399] who asked the Service Committee to carry out his feeding program in Germany after the First World War.[400] Herbert Hoover recalled that waiting for the spirit to move someone at long Quaker meetings had taught him the virtue of patience as an adolescent.[401]

Such contacts strengthened the AFSC network and forged bipartisan connections in the executive branch, Congress, and abroad. Bronson Clark, Executive Secretary of the AFSC, once remarked that the AFSC could be both "friend and critic" to the United States government, maintaining good relations while also criticizing some of its policies.[402] As Swarthmore religion professor J. William Frost wrote on the topic of Quaker conscientious objection, "Friends presented to the government a problem to be solved: how to avoid persecution, respect religious freedom, and, if it could not directly enlist pacifists in the fighting, then to make their activities seem not subversive and even helpful to the war effort."[403] This mediating role of the Quakers described by Frost to maintain their connections to influential members of society while simultaneously objecting to war, mirrored the simultaneous insider and outsider status of the AFSC. The AFSC understood the need to adhere to its goals with minimal government criticism.[404]

The AFSC gained unprecedented prominence following the outbreak of the First World War when news broke that the Quaker organization would share the Nobel Peace Prize with its British counterpart, the Friends Service Council. The award made the AFSC more visible, as did

the development of the Cold War, both of which pushed the AFSC to engage with an uncertain, threatening world.[405]

But the development of visibility and public opinion of the organization was accompanied by increased external scrutiny. Twentieth-century AFSC Quakers were both different from and similar to the nineteenth-century Mormons in this regard. Both were subjected to external criticism as well as internal dissent from other Mormons or Quakers. However the Quakers' insider status provided the AFSC with greater leverage than the Mormons to engage in political activities. Many early leaders of the AFSC had already carved out their own notable reputations, including Quaker historian Henry Cadbury and his brother-in-law, Rufus Jones, a Haverford College philosophy professor who envisioned that the AFSC could bring Friends closer together with the wider world.[406] Historian Allan W. Austin noted that "Cadbury's and Jones's presence on the AFSC meant that the two best-known Quaker spokesmen and scholars of the era were intimately involved in shaping the Service Committee and its programs."[407] Cadbury and Jones understood the importance of public perception and press coverage to the development of the AFSC.

The AFSC as a whole also understood the significance of tailoring its public image. One contributor to *The Quaker Approach to Contemporary Problems*, edited by the AFSC Public Relations Director, wrote that "what the Religious Society of Friends stands for has to be constantly re-expressed and offered to the world in concrete illustration as well as in precept, because it is essentially, as the title here says, an approach and not a platform."[408] This distinction was important in that it demonstrated how Quakerism offered a worldview predicated on pacifism and social justice, instead of on fixed denominational rules. Such a worldview was

useful for recruiting new members, Quaker and non-Quaker alike, but less useful to the FBI in trying to demarcate the organizational identity of the AFSC. She continued that while the Society of Friends was neither a relief nor peace society, AFSC activities had become associated with the Society of Friends in the public mind, and the AFSC became "their most modern expression" in the United States.[409]

The Society of Friends and AFSC were not interchangeable, but they of course shared institutional qualities and members. That the FBI struggled to differentiate the two, as well as differentiate Quakers from other Christian religions, molded the FBI surveillance strategy into one that was cautious and reflective. FBI officials pondered whether the religious beliefs of AFSC members bolstered their actions. Federal marshals and judges similarly questioned the religious motivations behind Mormon polygamy, yet they often cast Mormonism as a fake or false religion. FBI officials, in contrast, tried very hard to determine whether the AFSC was at its core a religious organization. While the question of what constituted a good citizen surfaced in both case studies, Mormons threatened the threads of nationalism and a coherent framework for citizenry, while Quakers' pacifism, and their overall congruency with good citizens, threatened the distinction between communism and non-communism.

Consequently, FBI agents tried to deconstruct Quaker theology and determine the extent to which it shaped the Service Committee. As early as the 1930s, the FBI published a one hundred-page report on the American Friends Service Committee, in which one section was entitled, "The Tenets of the Quaker Religion." The inclusion of this section in an AFSC report suggested that the FBI was trying to understand the relationship between Quakerism and the AFSC. The FBI agent cited a summary of Quaker theology entitled "The Faith of Friends" from

a 1916 booklet, *The Five Years Meeting of the Friends in America, Year Book*, which was "said" to provide a comprehensive outline of the Orthodox portion of the Friends, or the portion in the "ranks of Evangelical Churches."[410] The booklet pointed to the primary tenet of Quakerism as the relationship between the individual soul and God.[411] The inclusion of this section, though overall neutral in its tone of trying to outline the core principles of Quakerism, resonated with the use of a far less neutral New York Police Department report trying to outline the core principles of Islamic terrorism in the twenty-first century, which we will see in the next chapter.

The agent also cited a 1917 Orthodox Quaker publication, *The American Friend*, to understand the "Quakers' position regarding war" when it conflicted with the interest of the federal government. The agent interpreted the following general framework from a 1953 book on the AFSC to explain its stance on war: "We have ever maintained that it is the duty of Christians to obey the enactments of civil government, except those which interfere with our allegiance with God."[412] The agent's attention to this matter showed that the FBI took the time to consider whether the AFSC was an official religious organization. The agent added that the main purpose of the AFSC was to help others, "to aid those in distress, particularly those who do not come under the care of any other agency—Catholic, Protestant, or Jewish."[413] This FBI assessment had a twofold effect. It legitimized the charitable intentions of the AFSC by acknowledging its humanitarian work. But it also acknowledged the AFSC network cared for groups that fell outside of Catholic, Protestant, or Jewish charities.

**IV. Unveiling the FBI Surveillance Program**

On July 4, 1967, the Freedom of Information Act (FOIA) went into effect, and in February of 1975, the act was amended. From late April to early May of 1975, the AFSC

requested files from the Federal Bureau of Investigations (FBI), Air Force, Army, Internal Revenue Service (IRS), and Navy, as well as the National Security Agency (NSA), Secret Service, and State Department in December. The Army at first claimed it had no files, but then later mailed files to the AFSC. The Defense Intelligence Agency did not respond, and the NSA refused to provide any material. The AFSC afterwards received additional files from various government agencies on appeal.[414] One AFSC archivist commented on the difficulty of summarizing the various government agency files, as they ranged from AFSC news releases to allegations of communist infiltration. The sheer magnitude of the files was also overwhelming for a relatively small organization to archive, as the AFSC received thirteen thousand pages of files from sixteen different federal government agencies received from 1975 to 1979.[415] On March 30, 1979, the AFSC released a report to its members that police spying existed on a large scale, well beyond the parameters of the AFSC.

The FBI files on the AFSC revealed an interesting dynamic about how the FBI collected and processed intelligence. AFSC archivists acknowledged in their notes on the files that many FBI evaluations were fair assessments of the Quaker organization. Nonetheless, concerned citizen letters lacking substantive evidence to their claims had flooded the FBI. J. Edgar Hoover offered vague responses to these letters, explaining that FBI files were confidential and the AFSC did not require evaluation, but concealing that the Service Committee was in fact under the radar of the FBI.

One 1966 letter from a citizen inquired about the official FBI opinion of the AFSC.[416] Hoover replied with his standard response that he offered to many citizens, that the FBI was an investigative agency and did not make evaluations or conclusions about the integrity of any

organization, publication, or individual. However, he continued that the citizen's concern about communism was "understandable" and that a general knowledge of the communist movement was essential for all Americans. He included with his response a few of his own texts, *Masters of Deceit* and *A Study of Communism,* acknowledging the AFSC was a pacifist, Quaker organization. Another letter from a "patriotic American" inquired about a Dayton, Ohio, AFSC meeting, including clippings from the *Dayton Daily News* on Vietnam-related talks by Steve Cary of the AFSC. Hoover sent his standard reply along with a copy of the "Faith of Free Men."[417] Occasionally, Hoover included informative enclosures about the AFSC, or referenced the Senate Internal Security Committee and the House on Un-American Activities Committee in more detailed responses.

The FBI files confirmed AFSC leaders' suspicions about surveillance of its members. These suspicions were documented by Ann Davidon, whose husband had unveiled COINTELPRO by leading the break-in of the FBI office in Media, Pennsylvania, in an eighteen-page analysis of COINTELPRO: "[T]he suspicion that AFSC programs, volunteers and employees were under some sort of government surveillance deepened. To what degree these suspicions were paranoid, and to what degree they were based on reality was not known until 1970."[418] Watergate-related coverage of mass governmental surveillance in the *Washington Post*, *Washington Monthly*, and *New York Times* revealed that the Army was feeding material on various civilian groups, such as the AFSC, into its central data bank. The Philadelphia Police Department was spying on eighteen thousand "agitators," including an AFSC employee, while the Philadelphia Police Department was watching the Friends Peace Committee, a Quaker Action

Group, and other sister organizations. The Philadelphia Police Department did not grant the AFSC access to its files.

From 1976 to 1980, the FBI received information from other government agencies, including the Army, Navy, and CIA, but the majority of the information on AFSC members came from its own agents. For example, a 1971 letter from the Army to the FBI stated that the AFSC did not constitute threats to the Army, but individuals of the AFSC "were and can conceivably be of investigative interest to the Army when they engage in activities either with other organizations or individually which threaten the discipline or morale of Army personnel or adversely affect operators within the meaning of our Dec. 15 1970 policy letter."[419] The Army claimed it did not keep its own files on the AFSC, but the Service Committee found it had been mentioned several times in the three hundred and fifty Army centers that maintained files on organizations and individuals. The Service Committee had been mentioned in the following contexts: 1) among the organizations in the "mug books," or groups that could cause trouble for the Army; 2) among the "Compendium" of the Counterintelligence Analysis Branch, which suggested that civil rights groups could be infiltrated by subversive elements; 3) among subversive persons or organizations considered to "constitute a threat to national security"; 4) on a computer print-out using organization codes, including one for the AFSC; 5) among a several volume personalities publication, which described a wide range of groups, including the Quakers, the AFSC, and convicted Soviet spies; and 6) within a categorized system that organized entries based on group ideology and activity, which used the code letter "I" for "Pacifists."

The Department of Defense and the Secret Service, moreover, stored correspondence with AFSC members, including letters about demonstrations at the White House. The Air Force kept files about various vigils at Air Force bases during the late 1950s. In 1953, the Inspector General at Lowry Air Force Base reported on "extremely controversial subjects" at the Washington, D.C., Lenten School of Christian Living, including an AFSC anti-racism speech entitled "Segregation in Washington," causing the Air Force officer to recommend further investigation of the organization. The FBI was not focused on surveilling AFSC members involved with civil rights, however. This Air Force officer, after mentioning the AFSC anti-racism speech, transitioned to communism by claiming that any group with the word "committee" in its name was "likely to be a Communist Front."[420]

In the 1960s, the National Action and Research on the Military Industrial Complex (NARMIC) of the AFSC examined how corporations profited from military contracts during the Vietnam War around the time the FBI and Secret Service reported on numerous silent AFSC vigils. The AFSC had also begun sending medical aid to North Vietnam at this time. The Navy was particularly alarmed by the People's Blockade of 1972, when AFSC members on canoes interfered with the paths of war vessels on the east and west coasts.[421] The Navy blamed the incident on the AFSC and reported the incident to thirty-two military and government agencies. The Naval Intelligence Command reported afterward on the AFSC and the incident more broadly: "The AFSC is well organized and is apparently willing to expend the effort and fund as long as some visible benefit is derived."[422] The AFSC would argue upon receiving this file that "visible benefit" referred to any success in helping those in need. The Naval Intelligence Command was likely insinuating that the Service Committee pursued projects for positive

publicity, given its fury about the Blockade incident. Ann Davidon felt that these descriptions of the People's Blockade incident were fair but tended to credit the AFSC with "more omnipotence and omnipresence than may often have been the case."[423]

Meanwhile, in Vietnam, the United States Ambassador received a cable from Kissinger, who wrote that if the South Vietnamese government wanted to get rid of an AFSC-run prosthetics clinic, it could be done in the name of "Vietnamization."[424] And on the financial front, the IRS investigated whether such AFSC activities could jeopardize its tax exempt status. The AFSC had been left off the list of tax exempt agencies in the annual IRS publication for three years, which the IRS claimed was done so "by mistake," but that mistake damaged the AFSC. It was forced to pay taxes for these fiscal years. Ann Davidon claimed that this misunderstanding of the AFSC by the IRS actually formed the root of the strain between the AFSC and federal government:

> A great deal of material, however, reflects an apparent confusion and misunderstanding of the nature of the AFSC on the part of government agents, and the recurrent suspicion that our dissenting position in regard to peace and the achievement of equal justice must mean that we are subversive, or being used by the Communist Party, or even under its control. Old allegations from the House Un-American Activities Committee, the Senate Internal Security Committee, dating back to Joe McCarthy days and earlier continue to live in these files, although we have long since answered these charges and others in government and public life have testified to their groundlessness.[425]

As Davidon astutely recognized, FBI agents frequently demonstrated confusion in the files over the identity of the AFSC, namely, over whether it was an extension of the Society of Friends or an autonomous organization that the Communist Party could more easily influence, despite the transparency of the AFSC in its communications with the federal government.

J. Edgar Hoover was the pillar for mistrust of the AFSC by the FBI, despite the open line of communication between the two organizations. The identity of the Service Committee and its religious affiliation constituted the foundation of that mistrust. Hoover tried to distinguish between true and false religions in a 1958 article, in which he claimed communism was a false religion. His sentiment echoed a letter he had penned five years earlier for *Commonweal*, an American Catholic magazine run by lay Catholics, in which Hoover responded to an article he believed showed "the ultimate tragedy of communism which rests in its betrayal of God, self, and country. It is truly the final Christian heresy."[426] In 1961, he endorsed a series entitled, "This Godless Communism" in *Treasure Chest*, a Catholic comic book distributed to parochial schools. And in 1970, he defended Sunday School for *Christian Life*, by attesting to the historical significance of Bible study to the collective guidance and spiritual life of the nation, which was necessary to undermine the influence of non-believers.[427]

In his testimony before the House Un-American Activities Committee (HUAC), Hoover remarked, "I confess to a real apprehension so long as Communists are able to secure ministers of the gospel to promote their evil work and espouse a cause that is alien to the religion of Christ and Judaism,"[428] claiming not only that some ministers themselves supported communism, but that communism was incompatible with Judaism and Christianity. J. Edgar Hoover argued that communist ideology threatened the religious core of the nation. His publications in religious media about the importance of Christian faith for the longevity of the country demonstrated his strategic framing of communism in opposition to a Christian democracy, a union of American religion and politics.

Hoover was consistent in arguing through the years that in its national tolerance for religious freedom, the United States had lost sight of the deep religious roots of Western civilization. He appealed to the religious commitment of each American to stand up to the reality of communism in the world, uniting the two principles rhetorically in the phrase, "democratic faith."[429] His article, though centered on the fight against communism, revealed that Hoover respected religious freedom, as he wrote, "Communists have always made it clear that communism is the mortal enemy of Christianity, Judaism, Mohammedanism, and any other religion that believes in a Supreme Being."[430]

But Hoover did not respect communism as a religious ideology, as he went to great lengths to eradicate it. He appealed to the religious fervor of his fellow citizens by quoting Lenin's alleged declaration that communists must "fight against the inconsistencies of the 'Christians.'"[431] According to Hoover, communists infiltrated religious groups to subtly disseminate their propaganda, gain respectability, and introduce a false form of peace to church communities: "Every possible deceptive device is being used to link the party's 'peace' program with the church."[432] Although Hoover never explicitly named Quakers or individual groups in the article, his focus on peace as a link between communist and church communities was his focal point for detecting subversion within religious networks: "He cannot be a Marxist and adhere to a religion."[433] Hoover's dichotomous view of religion and atheistic communism, in fact, helped to explain his troubled approach to determining whether or not the AFSC had in fact been infiltrated, and if so, what that meant for the religious nature of the organization. For in Hoover's mind, while the ultimate goal of communism was "the utter elimination of all religion," it would

never defeat religion, its most "potent foe" and the core source of strength of the United States.[434]

FBI agents conflated the terms "AFSC" and "Quaker" in their reports, suggesting they struggled to separate the religious beliefs and actions of the AFSC from its political endeavors, and whether such a separation was a viable divide at all. An undated memorandum from the Office of Special Investigation of the Air Force cited a 1938 testimony before the House Un-American Activities Committee (HUAC), in which the speaker accused the AFSC of being a peace section of the War Resisters' International, founded in 1921, that was "working for the suppression of capitalism and imperialism and the establishment of a new social and international order."[435] The AFSC sometimes worked with the War Resisters' International, but it was not formally a part of it. Despite this factual inaccuracy, the FBI maintained this old file for its records. Preserved files permit such analyses of past phenomena. Yet saving files on the AFSC that proved to have no relevance to the FBI investigations suggested that the FBI had access to information on individuals, which the FBI could later exploit, when there was no foundation for investigating those individuals in the first place. This contradiction, of a government agency maintaining files that could give rise to unrelated investigations at a later point, will emerge in the following case study on the NYPD surveillance of Brooklyn Muslims.

In 1949 the Air Force suggested that subversive Quakers actually used the AFSC as a mouthpiece to conduct its pacifist affairs, a characterization of its organization that the AFSC fervently disputed: "American Quakers, through the AFSC, have been conferring 'for more than a year' with 'Russian officials and important citizens of the United States' to try to find a basis for establishing 'better relations' between the United States and the Soviet Union."[436] A 1953

Office of Special Investigations (OSI) document similarly reported that the Iowa Bureau of Criminal Investigations "considered this organization to be obstencivly (sic) sincere in their Quaker beliefs but that they were undoubtedly being used to advance theories harmful to United States policy."[437] In Nebraska, the FBI office more subtly averred the AFSC was "a Quaker Service Agency established for the support of the Quaker Society and the furtherance of their beliefs."[438] The Air Force continued to grapple with the Quaker-AFSC divide in 1957, drawing from an Army report that clarified the extent to which the AFSC composition was all-Quaker. The Air Force agent wrote down that while the members came from diverse religious as well as racial backgrounds, the AFSC charter instructed that AFSC leaders, namely officers and directors, had to be Quakers,[439] suggesting the importance to many government agencies of establishing a link between the AFSC and the Friends.

However, the Air Force Inspector General once defended the Friends and the AFSC, suggesting that the Air Force understood the two organizations to be discrete: "The Society of Friends (Quakers), parent organization of the AFSC, is a legitimate religious group and can in no way be considered a 'controversial' organization. The AFSC may be exactly what it professes, a pacifist organization, which is unalterably opposed to force in any form."[440] The Inspector General's ambivalence highlighted the challenge the AFSC posed to government agencies in its ability to destabilize a comfortable boundary between threatening and non-threatening, and communist and non-communist. It also showed the diverse sources of information filtered through the FBI surveillance system, which drew from multiple government agencies, that offered different perspectives and understandings of the AFSC and the extent of its threat to United States national security.

Confusion over the identity of the AFSC subtly showed that the FBI was interested in the religious nature of the AFSC, for determining whether and how it could be surveilled, as well as how to define it. An Air Force memorandum from 1947 reported an informant had claimed that a deleted AFSC name was "one of the powerful influences in Socialism and Communism. It was stated that [deleted] was at one time the shining light for religious inspiration of the American Friends Service Committee. This informer said that the American Friends Service Committee was alleged to be a Quaker organization but was "actually a Unitarian group,"[441] again showing that the religious identity of the AFSC baffled the Air Force and FBI and that the AFSC was perhaps only nominally committed to pacifism. An additional source corroborated this claim by adding: "It was stated that the organization was about 15% Quakers and 85% non-Quakers."[442] The attempt of the FBI to categorize the religiosity of the AFSC by storing this report showed the extent to which it ascertained the communist threat. Moreover, by aligning the AFSC with Unitarianism, the FBI legitimized the surveillance of the AFSC by questioning whether Quaker pacifism truly influenced its service activities. But the Unitarian association also demonstrated the earnestness of the FBI to fairly analyze the goals and theological motivation of the Service Committee. This characterization resonated with J. Edgar Hoover's union of Judeo-Christian and democratic ideals, as expectations that non-democratic religions did not meet.

The AFSC would respond years later to the FBI allegations that it was a Unitarian organization by highlighting its all-Quaker leadership, despite having non-Quaker members, and by noting its connections to twenty-one of thirty-one Quaker Yearly Meetings: "It is true that only 20% of the staff is Quaker, but the rest are sympathetic to Quaker beliefs."[443] The AFSC reiterated that it included non-Quaker employees to send overseas based on their merit, rather

than on religious dedication. The AFSC also claimed it was creating a more diverse, multicultural environment by hiring minority workers.[444]

The CIA repeated the confusion over the alleged Unitarianism of the AFSC in the 1950s. A 1956 CIA file, reported that a group of Texas Quakers "disowned" the AFSC because the Committee had spiraled out of the domain of the "legitimate" Society of Friends: "[T]he Committee fosters liberal, unitarian religious doctrines, and that . . . [its] Institutes of International Relations are schools for Communistic propaganda and liberal religions."[445] The AFSC regional office in Texas denied the charge, but the data remained in the FBI files. The significance here was that agents of the FBI and CIA actively sought to understand the religiosity of the Quakers, so as to better predict their political actions. They also continued to justify AFSC surveillance by pointing to its similarities to a dangerously liberal, Unitarian organization.

Despite the inability of the CIA to iron out the religious origins of the AFSC, Ann Davidon mused that the CIA overall seemed to be "the most well-organized of the intelligence-collecting government agencies, at least in terms of its Freedom of Information response."[446] The CIA sent documents to the FBI that pertained to the AFSC stance on foreign policy, including AFSC letters that solicited funds for overseas and domestic programs or inquired about international relations with countries that were not in line with United States policy; flyers that advocated for peace in Indochina and Vietnam or organized marches in the United States; and a pamphlet entitled, "The Quaker View of United States Foreign Policy." It also monitored foreign broadcasts (FBIS) from Hanoi and Peking that quoted AFSC members, including descriptions of John Sullivan in Hanoi in 1972, Wallace Collett's visit to Peking that same year, as well as Russell Johnson's and Bronson Clark's visits to Peking the year before.[447] It was evident, based

on these files, that the CIA assisted the FBI with determining how the AFSC might act in foreign policy matters in light of the Cold War.

Prior to the onslaught of the Cold War and the communist threat, the FBI had predominantly surveilled American Quakers for their conscientious objection to war and the military. In this time period, the FBI was often prompted by suspicions in anonymous citizens letters, sometimes from Quakers, about the AFSC.[448] The relationship between the AFSC and Russians aggravated the FBI from the very start. In 1921, an FBI agent traveled to Philadelphia from New York, unsuccessfully investigating AFSC cooperation with a Russian relief committee. Three months later, Hoover requested that a Philadelphia agent acquire information about the AFSC, which was suspected of providing relief not just to the Soviet Union, but to its "anarchistic organizations." An unidentified Philadelphia FBI agent reported a few days later with many positive points about the AFSC, which it characterized as a "religious and philanthropic society," including its officers, "persons of high standing in commercial and social circles, many of whom are devoting all of their time, without monetary gain, in the Committee's undertaking to help the famine stricken people of Soviet Russia, and in their other philanthropic undertakings."[449] The Philadelphia FBI office would come to the defense of the AFSC consistently throughout Hoover's surveillance campaign against it.

In the years leading up to the Cold War, the FBI was already concerned about the Quaker identity of the Service Committee. The FBI office and headquarters in Washington, D.C., was relieved to find no evidence that the AFSC had engaged in "purely political matters" or subversive activities in 1941.[450] That the FBI distinguished between what was or was not purely political action foreshadowed its central concern with defining the AFSC. The FBI also

surveilled the 1941 Peace Caravan in Osborne, Kansas, which hosted a series of meetings addressing peace and conscientious objection in the community. According to the FBI, its observations of the Peace Caravan suggested the AFSC represented the Society of Friends "in the fields of social action."[451] The incorporation or representation of religious beliefs in AFSC actions protected the Peace Caravan from further investigation.

One of the most important FBI documents from the 1940s stemmed from correspondence between J. Edgar Hoover and Adolf A. Berle, lawyer and Assistant Secretary of State, about pacifist organizations. Their correspondence included a "diagram" of the AFSC and a one hundred-page report on the American Society of Friends.[452] The report was fairly objective, comprising a history of the American Friends, an explanation of Quaker religious beliefs, and a summary of the history and activities of various subsections of the AFSC. The introduction of the report described the AFSC under the heading, "The Society of Friends," suggesting the FBI linked the AFSC closely with the Friends relatively early on in its investigation of the Service Committee. The FBI agent here accepted how the AFSC intertwined religious and political beliefs, despite other reports insisting on distinguishing between the two: "The American Friends Service Committee is an organization formed by Quakers, or Friends as they are also called, and actually practices, in a modern fashion, the theories and teachings of the Quaker religion. It can be seen from this that some knowledge of the history and tenets of Quakerism should be had to more completely understand the purpose of this organization."[453] Here, the agent explicitly wrote that to understand the AFSC, the FBI needed to understand the Quakers.

The agent purposefully characterized the movement as exhibiting a certain form of Christianity that also gave women an equal place with men in the church, all of which helped the

FBI agent argue that the AFSC was not entirely dangerous in the United States. The agent characterized the organization of the Quaker church as "essentially democratic," then describing how either children of Quaker parents inherited the religion. Otherwise people could request admittance and partake in activities of the meetings. The agent then provided a chart delineating the organization of the AFSC, as well as of how and where various Society of Friends meetings occurred, which suggested the FBI was trying to construct a clearcut framework for surveilling the Quaker group beyond the official meetings of the AFSC.[454]

Possibly the earliest concrete accusation that the AFSC was a communist organization was sent to Hoover in 1947 from the Baltimore FBI office. The report included clips from a confidential 1947 report, the *Weekly Intelligence Summary* #74,[455] to support its contention that the Communist Party had infiltrated and taken advantage of the Service Committee. The report, full of many details on the AFSC, suggested that the AFSC in practice was not a "pure Quaker enterprise" and therefore could therefore be investigated without blatantly violating their free exercise of religion.[456]

Communist suspicions began to spread rapidly after this accusation, prompting additional investigations. In 1948, a five-page FBI report argued that within the AFSC's relief and peace education activities, "many agitators and leftists are among its operating personnel" and that its work with Spanish refugees permitted aid to communists. The same year, an agent for the Philadelphia FBI researched and reported to Hoover on AFSC material from the Swarthmore Peace Collection at the Quaker-founded Swarthmore College. In 1949, the Seattle FBI relayed to Hoover an informant's report on the AFSC Institute of International Relations in Seattle, while the Boston FBI reported on an AFSC program centered on China that an informant described as a

venue through which Communists were infiltrating the AFSC. In 1950, the New Haven FBI reported on an AFSC meeting about outlawing the atomic bomb, a meeting that communists did in fact attend.[457]

By 1949, tensions between Russia and United States had fully permeated the sphere of the AFSC. One memorandum from August of 1949 summarized a report of a Seattle informant who, after listening to the lecture of AFSC member, civil rights leader, and political activist, Bayard Rustin, "What There is to Fear From Russia," contacted the FBI. The FBI highlighted the part of the informant's report on the lecture that Bayard Rustin "stated that 'we' have no reason to fear Russia,"[458] which had been presumably marked as evidence that the Service Committee was on the same side as the United States. The Seattle agent included an AFSC pamphlet that listed Quaker goals and principles about peace, as well as the claim that the purpose of the AFSC was to "affect repeal and/or avoidance of draft through religious belief."[459]

In 1950, an FBI agent from Philadelphia reported civilian complaints that the AFSC aided communism through pacifist teachings. The agent contemplated communist links to the AFSC but concluded that while AFSC teachings "parallel in some instances the CP propaganda line . . . it is noticeable this group has not deviated in its teaching in the past 30 years, and it appears to be a coincidence that there is a parallel."[460] In the early 1950s, the FBI continued to receive inquiries about the AFSC from private citizens. Hoover offered his standard, vague response that offered little information to the concerned citizens, but several times Hoover included materials to citizens such as those entitled, "How Communists Operate" and "Unmasking the Communist Masquerader."

Citizens continued to write to Hoover with varied concerns about the AFSC, including its speakers, interracial camp in Texas, and anti-conscription literature. Hoover told these citizens the FBI did not investigate conscientious objector claims, but he did forward the letter to Selective Service. The Texas FBI continued to flood Hoover with inquiries about the AFSC. Hoover responded to the Texas office with the thumbnail sketch of the AFSC created by the Philadelphia office. The sketch indicated that the AFSC was a pacifist Nobel Peace Prize-winning organization whose work sometimes paralleled the beliefs of the Communist Party. Average citizens, nonetheless, continued to receive Hoover's vague reply that FBI files were confidential.[461]

Hoover in one instance deviated from his typically expressed suspicion of the AFSC. He proactively defended the Service Committee to a college professor who wrote in 1952 that he had heard the AFSC was "practically Communistic." Hoover replied that the AFSC is "a committee of the Quaker faith . . . engaged in projects designed to promote peace and to afford young people the opportunity for constructive patriotic service, and to provide relief assistance in this country and abroad."[462] This unusual response was perhaps Hoover's attempt to rebut the accusation that the FBI was insufficiently surveilling the AFSC.

The Philadelphia FBI informed Hoover this same year that they would defend the AFSC in their characterization of the group a "sincere pacifist organization . . . an action committee of the Quaker faith opposing military conflict, preparedness, and the drafting of men." They added that the work of the AFSC paralleled that of the Communist Party in the "peace promotion field," but since the AFSC had not deviated from its philosophy in thirty-five years, the parallel between

the two organizations was merely coincidental. They also reminded Hoover that the AFSC had received the Nobel Peace Prize in 1947 for its pacifism.[463]

By March of 1954, an FBI report from Philadelphia implored Hoover to cease his campaign against the AFSC. Philadelphia agents were more cognizant of the community benefits that the Philadelphia-based Quaker organization offered to the American people. They affirmed the sincerity of pacifism in the AFSC while acknowledging its parallels with communism. But they insisted that their informants, who were familiar with AFSC members, had no knowledge of any communist infiltration of the AFSC. Some Philadelphia-based informants came from within the Religious Society of Friends itself. One informant noted it would not be out of character for an AFSC member to maintain contact with an individual or group affiliated with the Communist Party, but the Philadelphia FBI office continued to defend the AFSC. The in-depth Philadelphia report outlined the structure, activities, and philosophy of the AFSC, and includes copies of AFSC literature.[464] Straightforward sections on the philosophy and structure of the AFSC drew from AFSC material, while other sections constituted assessments of the AFSC by FBI agents. The report reiterated that while the AFSC limited its corporate membership to Quakers, it was not an official organ of the Society of Friends.[465] The Philadelphia branch informed Hoover they would bring the case to a "local conclusion" since there were no facts supporting communist infiltration.

Reports from other cities, including Chicago,[466] San Francisco,[467] and Houston,[468] supported the Philadelphia claim that no evidence could prove Communist Party infiltration of the AFSC. A few reports diverged from the majority opinion of FBI agents, however, such as one from Charlotte, North Carolina, which reported that AFSC member William V. Roose spoke at a

convention of the Christian Church in Nashville and "criticized the United States at every opportunity and assumed the position that Russia could do no wrong."[469]

Despite the attempt by some local FBI offices to mitigate J. Edgar Hoover's concerns about the AFSC as an organizational whole, the FBI constantly opened and closed cases on individual AFSC members in 1955. One report, containing a section called, "Characterizations of Individuals," examined Scott Nearing, an economist and social reformer whose writings focused on the unequal distribution of wealth in the United States.[470] The FBI agent reported that Nearing had claimed it was not disloyal to side with communism, which the agent attributed to Nearing's "deep Quaker pacifism."[471] Meanwhile, another FBI agent redeemed AFSC leader Clarence Pickett as a man of "deep religious conviction" who kept with the "tenets of his religion" when speaking out against war. Though Pickett sometimes accepted the suspicious motivations of others without inquiring into them, he found "atheistic Communism repugnant."[472] Finally, the FBI filed an article from the communist publication, the *Daily Worker*, entitled "Quakers Say Witchhunt Pervert Gov't." The article claimed that Quakers from twenty yearly meetings of the Society of Friends, the AFSC, and the Friends Committee on National Legislation (FCNL), a lobbying organization founded by the Society of Friends, believed that government investigations into individuals' political beliefs and government-enforced loyalty oaths undermined the function of the government and "'put government above God.'"[473] It was clear from this assessment that Hoover did not succumb to FBI agents' pressure to cease surveillance of the Service Committee or specific members.

The FBI strengthened the secrecy and organization of its surveillance program in the second half of the 1950s by introducing new means for classifying information. FBI agents

began referring to informants in code, using the letter "T" followed by a number.[474] The FBI also increased the frequency of investigations: in June 1955, the FBI reported that Charles F. MacLennan, Executive Secretary of the AFSC office in Columbus, Ohio, had partaken in a Columbus peace moment and mingled with Communist Party members.[475] A seemingly ordinary report about the AFSC and Communist Party, much of the report was blacked out, and it preceded an increased number of AFSC investigations throughout the country.

The FBI also started to increasingly intercept mail in the second half of the 1950s. In April 1955, the United States Post Office Department seized five pamphlets sent to the AFSC Peace Education Office in Cambridge, Massachusetts, from British organizations. The pamphlets were intended to be included in a "Peace Packet" that represented the viewpoints of the AFSC on international affairs. One of the pamphlets, "The Camp of Liberation," was written by prominent labor and peace activist, A. J. Muste, who was deeply inspired by Christian pacifism and for a time served as a minister for the Society of Friends before gravitating toward the more militant labor movement.[476] Muste was under FBI surveillance and corresponded with AFSC members, including Colin Bell. The AFSC asked for the federal government to clarify its principle and policy behind seizing mail, to which the government did not respond.[477] In the following month, the FBI intercepted correspondence between Wilmer T. Jossem, an AFSC member in Iowa, and an unidentified individual. In the letter, Jossem wrote that he had attended a Quaker meeting in Indiana at Earlham College where attendees had discussed how to establish a communal attitude toward the draft law. The general consensus was to encourage non-registration through legal instruction and support.[478]

J. Edgar Hoover's influence in directing the AFSC surveillance campaign in the second half of the 1950s, in summary, amplified. But while the FBI expanded its campaign, the AFSC responded with equal force. Louis Schneider, the prominent Quaker leader Schneider who worked for the AFSC for four decades, including as Executive Secretary from 1974 to 1980, refused on behalf of the AFSC to sign a security clause in a contract prepared in 1956 by the FBI for AFSC personnel who were working on community development in India. When asked if his refusal was based on his Quaker beliefs, Schneider replied that the AFSC was not an extension of the Society of Friends but a separate organization whose people were mostly Quakers. Schneider overtly stated that although Quakers opposed communism, they believed people had the right to believe and advocate whatever they wished, which included believing in or even joining the Communist Party. Schneider likely opposed signing the security clause because he saw it as unnecessary and insulting to the organization. He may have also opposed doing so based on the Quaker opposition to oath taking. Arguing that the security clause would place uncharacteristic restraint on the AFSC, Schneider "stated that his organization prided itself in acting independently of any outside controls or restrictions by the government or otherwise."[479] In his response, Schneider offered a direct defense of the Service Committee but also a working framework for AFSC members to make their own choices about future activities that may involve cooperation with Communist Party members.

Hoover frequently lied in his response to citizen letters by claiming that the AFSC had never been investigated, even as the FBI increased its investigations of the Service Committee in 1956 and 1957. Hoover began to lose his perceived control over the AFSC at this time. The FBI Special Agents in Charge (SACs) sometimes resisted following Hoover's assumptions, as

demonstrated in a correspondence between Hoover and Special Agent in Charge (SAC) Chicago about the 1956 Second Annual World Peace Conference in Chicago.[480] SAC Chicago claimed the conference, which was sponsored by pacifist groups, was harmless, and that while investigations could be broadened by looking at both left and right-wing organizations, revelations that the FBI was examining religious or pacifist groups could be a "possible embarrassment" to the federal government.[481] Nonetheless, Hoover persisted with his surveillance campaign into the 1960s, when the FBI even more carefully watched the AFSC and its possible ties to communists. In one November 1960 memorandum, an Army Intelligence Duty Officer reported on the satisfactory behavior of the AFSC and other Quaker organizations that were merely peacefully picketing the Pentagon while distributing pacifist literature.[482]

While the general consensus in this decade remained that the AFSC was not a communist organization, some FBI agents noted the contact between individuals of both organizations as well as the participation of Communist Party members in AFSC-organized events, including peaceful vigils and walks throughout the country, such as the Easter Peace Walk from Philadelphia to Washington in March 1967, or a silent vigil held in front of Seattle's Main Public Library in February 1967. At these gatherings, FBI agents scanned crowds for members of "basic revolutionary organizations," while collecting simple information, such as the duration of a vigil and the number of participants.[483]

Cracks in Hoover's surveillance policy surfaced throughout the 1960s. Despite his frequent correspondence with concerned citizens, in which he repeatedly claimed that the FBI never investigated the AFSC, he ultimately admitted in one response to a citizen that back in 1942, the FBI had formally investigated the AFSC.[484] Although Hoover's acknowledgment did

not extend back to 1921, when the FBI first started investigating the AFSC, he contradicted his earlier standard responses to citizens throughout the late 1940s and 1950s, when he claimed that the FBI never investigated the AFSC.

Hoover also began reconsidering the accuracy of the "CP" label. He suggested the term was employed too loosely in discussions of non-Communist Party groups: "[A]n increasing number of communications are received under the 'Communist Party, USA' where the subject matter does not pertain to the CPUSA or only indirectly pertains to the CPUSA."[485] Seemingly, Hoover was strategically starting to reconsider his AFSC surveillance campaign.

Yet whatever remorse Hoover showed in this correspondence faded to the background in 1962, when he restored the AFSC file from closed to "pending" due to new information that seemingly incriminated the AFSC as communist-infiltrated. A report on a Communist Party meeting quoted a speaker who referred to the Quakers as a "key force in establishing united action in various phases of peace activities," and they they worked "consistently" with the Communist Party in private but not in public.[486] The FBI Philadelphia office, fairly consistent in its defense of the AFSC by this point, responded that there was far too much material to sort through and that a report would be futile since the AFSC was a pacifist organization that did not merit investigation.[487] As AFSC volunteer Helena Michie noted in a summary of the files, the campaign raised "the question of whether the FBI sees itself as an instrument of change as well as an investigatory agency."[488]

Whether the FBI saw itself as an instrument of change as a whole is perhaps less ascertainable than the fact that local branches exerted influence. It is clear, for instance, that the FBI Philadelphia office led the resistance to Hoover's surveillance of the Service Committee.

Many, but not all, branches disagreed with the Philadelphia office. In short, local FBI offices clashed with each other just as Quakers and AFSC members sometimes quarreled. Some local offices believed that the AFSC was not a mouthpiece for the Society of Friends and therefore fair grounds for investigation. Another 1965 report claimed the AFSC was in fact the "social outreach arm of the religious group known as the Society of Friends (Quakers)."[489] Discord within the FBI demonstrated the diversity within the organization.

The AFSC, much like Mormons in the nineteenth century and Muslims in the twenty-first century, were attacked in mass-produced publications, which oftentimes found their way into the FBI files on the AFSC. Prominent leaders of the AFSC were well aware of the significance of its public image since its formation. Accusations made beyond the coveted files of the FBI or other government organizations, and within publicly accessible media, forced AFSC leaders to consider when and how to respond to such publicly available vitriol. They were afforded the opportunity to respond at all given the insider statuses of AFSC members. Mormon leaders, in comparison, tried to respond to attacks and were obstructed from doing so given their location on the outskirts of American culture. AFSC leaders became particularly concerned with the organizational public image by the early 1950s, perhaps logically so given the growth and outreach of both the AFSC and the FBI surveillance campaign by this point in time.

The most controversial public attack against the AFSC, which the FBI maintained in its AFSC file and was therefore shaped by, showed precisely how the FBI continued to consider the AFSC a communist threat in the mid-1960s, despite the efforts of FBI agents to close the investigation in the mid-1950s. Suzanne Labin, the author of a Senate Internal Security

Subcommittee Report entitled, "The Techniques of Soviet Propaganda," referred to the AFSC as a "well known transmission belt for the Communist apparatus."[490]

Colin Bell, AFSC Executive Secretary at the time, rebutted Labin's charge at a press conference in July of 1965, retorting that the accusation was "completely untrue and undocumented." He wove together the piety of Quakerism with the activism of the AFSC in his argument, arguing that since the seventeenth century, Quakers had "prayed and worked and witnessed for the nonviolent ordering of human society . . . out of deep religious conviction. […] We have no activities to hide . . . and we are neither beholden to nor affiliated with any group, party, or movement in ways that are not open for all to see."[491] Bell here emphasized both the religious basis of the organization, as well as its autonomy from pernicious organizations such as the Communist Party. Bell also unraveled the conflation of the AFSC with the Society of Friends. He reminded the reader that, although the AFSC was formed by distinguished Friends and constituted over two hundred Quakers from around the nation, it did not represent any particular Quaker yearly meeting. Nonetheless, Bell linked the religious beliefs of AFSC members to the organizational stance of citizenship: "We believe that a citizen's deepest spiritual insights form the true basis on which he may know how best to serve his own country and all men."[492]

Two senators followed Bell with their own responses to Labin's determined accusation. The first was Thomas J. Dodd, a United State Senator from Connecticut, whose speech to the Senate in July of 1965 was later published as, "Repudiation of Attack on American Friends Service Committee." Dodd, a member of the Senate Internal Security Subcommittee which published the report, stated: "I wish to disassociate myself from this statement, which I never

saw and never approved, and which I consider most damaging and unfortunate. Although I have strongly disagreed with some of the foreign policy positions taken by the Friends, I have the greatest respect for their organization and for the remarkable humanitarian work it carries on in so many parts of the world."[493] Dodd's referral to the "foreign policy positions taken by the Friends" indicated that even members of the Senate conflated the AFSC with the Society of Friends. He claimed that he approved of the study leading to the controversial publication because it seemed sound, but the revisions, which offered a controversial characterization of the AFSC, were not submitted with his approval or the approval of other subcommittee members before it went to the printer.

Hugh Scott of Pennsylvania, who had offered extended remarks to the Senate on the previous day, was the second senator and member of the Senate Internal Security Subcommittee to respond to the report.[494] Scott reminded the Senate he had published a statement condemning the "reckless charge against one of our Nation's finest humanitarian organizations." He admitted he did not always agree with the views of the AFSC, but that he could not overlook the undocumented accusation made by one of his colleagues. Seemingly switching gears by suggesting that the AFSC needed to be surveilled, however, Scott then presented to the floor the "McCarthyite Report," which cited an *Evening Bulletin* editorial on the AFSC: "It can get in with its ministrations where many other organizations cannot penetrate because it is well known to have no political objectives. It is the one organization nobody wants to investigate–it operates in a goldfish bowl."[495]

Scott pointed out that Labin had also quoted a former FBI agent, Marion Miller, who infiltrated the Communist Party and testified that "much of the propaganda literature of the Peace

Committee was written within and distributed by this AFSC, well known as a transmission belt for the Communist apparatus." Miller alleged that Communists used AFSC literature in the early 1950s due to the respectability of the AFSC. The AFSC responded by bringing its literature of that time and asking Miller to identify which ones were used, but Miller was unable to do so. The AFSC argued, drawing from this exchange, that even if the accusation had been proven true, it would not have placed any blame on the AFSC itself, since it was not responsible for organizations that chose to draw from its teachings or practices.

Ann Davidon observed that by the 1970s, when COINTELPRO finally exposed the surveillance of the AFSC, the FBI was aware of the pacifist orientation of the AFSC and did not officially regard the AFSC as subversive, even though its policies sometimes paralleled those of the Communist Party. As a result, FBI agents repeatedly confirmed this organizational stance on the AFSC to its own agents and inquiring citizens. However agents continued to examine any possible AFSC connections to groups or individuals engaged with public demonstrations, named on the Attorney General's list, or affiliated with the Communist Party or Communist countries.[496]

By the 1970s, as Davidon noted in her 1978 article for *The Nation*, Hoover began to realize that he might not prove that the AFSC was infiltrated by communism. Instead, the FBI added new groups to one of its other surveillance programs, Cominfil, under a different name, the New Left, which included the Vietnam Veterans Against the War, SDS, and AFSC. The headquarters of some of these groups, including the AFSC Philadelphia office, were mysteriously broken into in the early 1970s. From 1973 to 1975, after J. Edgar Hoover's formal leadership at the FBI ended, a group of individuals undetermined to this day but suspected to be FBI agents, stole files from the Washington D.C. Peace Center, Quaker House, Friends Meeting

House, home of a Peace Center worker, and the AFSC office in Cambridge, Massachusetts. The AFSC reported missing files in the mid-1960s pertaining to the Black Panthers and Martin Luther King, Jr. Moreover, an unidentified person or group of people bombed AFSC offices in Miami, Florida, and Des Moines, Iowa.[497] FBI concern about communism within the AFSC redirected to fear of radicalism that spurred interracial activism of the Service Committee.

**V. The Response of the AFSC**

By 1968, a few years before the COINTELPRO revelation, the AFSC had become defensive about how the federal government divided groups into those safe or not safe from surveillance. In a staff meeting, the peace education secretary for the San Francisco region, Ben Seaver, claimed that conscientious objectors were subjected to "extreme discrimination" by the federal government in the questions of the Selective Service Form 150, a questionnaire all prospective conscientious objectors had to fill out, which included yes-or-no questions such as: "1. Do you believe in a Supreme Being? 2. Describe the nature of your belief . . . and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation. 3. Explain how, when, and from whom or from what source you received the training and acquired the belief."[498] Seaver lamented on the plight of conscientious objectors: "That we should accept the right of the government not only to define religion, which seems to be forbidden in the First Amendment, but also that we should allow the government to decide that only those who met this definition had a conscience that was worth considering; that others didn't have a conscience."[499]

AFSC members had always looked outward from their own networks on the question of conscientious objection. Yet it was not until the AFSC confirmed it was being surveilled by the

federal government, based on information that emerged from a lawsuit including the Chicago AFSC, that the organization examined how surveillance affected the wider American public. Consequently, the AFSC became even more radical and politically active than it had been prior to the exposure of the FBI surveillance program. In this way, governmental surveillance of the AFSC shaped its organizational structure much as the Mormons formally erased polygamy from their religious practices. The Chicago AFSC entered into a crucial lawsuit with ten other organizations and seventeen individuals, against the city of Chicago, its police, Mayor, and local and federal officials, for bugging its office and planting informers with permission of the police.[500] Two members of the Legion of Justice, a paramilitary organization formed to undermine the peace movement in Chicago, had visited the AFSC Chicago regional office and secretly placed a listening device under a conference table. This information was revealed during the "Chicago 8" conspiracy trial that charged eight antiwar activists with the responsibility for violent demonstrations at the August 1968 Democratic National Convention. The AFSC then decided to investigate additional ways and places in which it was possibly surveilled. The COINTELPRO revelations of 1971 further confirmed its suspicions, and by 1975, the AFSC had started to receive its FBI files from the FOIA requests.

The AFSC joined two additional lawsuits in Baltimore and Detroit, in which newspaper reports revealed the police had been keeping files on civilian groups, including the AFSC.[501] Following the COINTELPRO revelation in 1971, the AFSC joined the Philadelphia Resistance and eighteen other organizations on July 14, 1971, in a civil suit against Attorney General John Mitchell and FBI Director J. Edgar Hoover. The lawsuit was settled out of court in December of 1975. Plaintiffs paid the costs and the FBI was ordered to stop illegal tactics.[502]

After the AFSC discovered the information about its Chicago office, it conducted a survey of its regional and national staff members to find more evidence that the AFSC was under surveillance. It found various pieces of evidence, including the fact that a house guest of an AFSC staff member turned out to be a member of the Chicago Police Department who appeared at the Chicago conspiracy trial. Additionally, in Texas, a peace education AFSC staff member, who offered draft and military counseling near an Army Base, asked to see his personal file at the Military Intelligence Office. Though told he had no file, four people walked into the office, all of whom he had previously seen under different disguises and aliases at the AFSC office. Finally, the AFSC survey documented FBI suspicions that the break-in of the Media FBI office, revealing COINTELPRO, was connected to members of the AFSC.[503]

Americans learned from COINTELPRO that the FBI files, which were sent anonymously to newspapers and organizations, including the AFSC National Action and Research on the Military Industrial Complex (NARMIC), instructed police departments on how to gather intelligence, maintain positive relations with citizens, and prevent riots. In retaliation to this leak, the FBI broke into the house of an AFSC employee who had transported copies of the received files to a printer. The AFSC pursued this intrusion in court, and the case was settled five years later, after J. Edgar Hoover had already passed away. As a result of the settlement, the defendants were awarded costs and promised the FBI they would no longer engage in such illicit actions.[504] The recently published book, *The Burglary: the Discovery of John Edgar Hoover's Secret FBI*, revealed the identities of the individuals, led by William Davidon, who exposed Hoover's Counterintelligence Program: "[T]heir actions had dealt the first significant blow to an institution

that had amassed enormous power and prestige during John Edgar Hoover's lengthy tenure as director."[505]

As an organizational response to COINTELPRO, the AFSC launched the Board Level Task Force on Government Surveillance and Citizens' Rights in 1975, which later prompted the Campaign to Stop Government Spying and raised awareness about government surveillance of groups that were deemed dissident or subversive. The Campaign to Stop Government Spying was comprised of three foci: Requests for AFSC Files, Litigation, and Education and Action.[506] Of particular grievance to the AFSC was the fact that it had consistently notified the government of its activities throughout the twentieth century, particularly those that involved public demonstrations or protests of government policies: "Such federal and police conduct can only be justified by a state which fears and distrusts the people and which values First Amendment principles by word but not by deed."[507] If transparency and cooperation could not prevent unlawful government intrusion, then it remained unclear to the AFSC as to what could.

In individual responses to COINTELPRO, AFSC members reacted differently, some with "naive openness, others with excessive secrecy, but to what extent their feelings may have been paranoid was never certain," according to Ann Davidon.[508] She boldly suggested in an AFSC report: "A government which considers itself at war not only with half the world but with perhaps half its own people is not one conducive to peace. […] Without becoming an American Civil Liberties Union, AFSC can nevertheless use legal means as one form of such education in matters affecting AFSC's legal rights. It can use its own case as an example, with care to become neither self-righteous nor self-preoccupied. […] In general AFSC can try to create a climate of public opinion which is of its rights."[509] Her opinion that the AFSC could employ legal means

was shared by the leaders of the Service Committee, who joined lawsuits and formed the Campaign to Stop Government Spying. But Davidon's insight marked another shift in the identity of the organization as a whole. Much as the Cold War had prompted the AFSC to hire non-Quaker employees, the COINTELPRO revelation prompted the AFSC to become even more politically active and resistant to government invasion than before, by engaging in legal actions against perceived injustices.

Further demonstrated in Davidon's observation, AFSC members were well aware of their precarious position in the eyes of the government. One AFSC press release, authored by Paul E. Brink, noted that its activities had brought the Service Committee "from time to time into conflict with those who confuse[d] dissent with disloyalty, and who believe[d] that efforts to achieve better international relations must be 'communist inspired.'"[510] Brink alluded to the nuanced relationship between the AFSC and the federal government, which wearily considered the Service Committee to be a "genuinely religious, humanitarian organization": "Since our earliest relief work we have often been investigated by the FBI or the Attorney General's office, only to be inevitably 'cleared' as a genuinely religious, humanitarian organization. We have never allowed this miasma of suspicion to deter us from following the dictates of conscience, and we have always sought to dispel the climate of opinion which encourages the investigation of private and humanitarian groups such as ours, as well as of legitimate social change and political groups."[511] Brink's press release even asked for reformation of the FBI and CIA on behalf of the AFSC. He implored Congress to prohibit actions that had "brought the intelligence community into disrepute," and claimed that the CIA and FBI were so compromised that they were "beyond salvage."[512] Brink cited Quaker ideals to summarize his stance: "Believing in the Quaker ideal of

an open society in which all are free to promote peace, equality, and justice without fear, the American Friends Service Committee unhesitatingly adds its voice to those which say that the CIA and the Internal Security Division of the FBI must be abolished."[513]

Louis W. Schneider, the Executive Secretary of the AFSC at the time, supported Brink's outrage against the federal government: "The bulk of the pages collected indicates an inappropriate intrusion by the government into the beliefs and activities of the AFSC. It indicates no legitimate interest on the part of the government. Some of the surveillance is patently illegal."[514] Schneider also criticized the National Intelligence Act of 1979 in front of the Senate Select Committee on Intelligence, suggesting that the bill provided no restrictions on targeting United States citizens abroad, and that the government justified illegal methods for collecting information and protecting the nation against espionage and terrorism. Schneider posited a more subtle critique of the National Intelligence Act, that it did "not address the pretext of the past wherein groups could be surveilled because they might in future years develop into a group capable of engaging in a criminal violation."[515]

The AFSC suggested to other groups around the country that they should be cautious of state and local agencies, which the AFSC found to be central to the intelligence network of the federal government.[516] This insight foreshadowed the decision of the New York Police Department (NPYD) to surveil Muslim Americans in the post-September 11 era. The AFSC, in other words, was quite astute in its assessment of the extent to which surveillance permeated all levels of United States government, and it assisted other organizations that were surveilled for alleged subversive activities. Staff of the Government Surveillance and Citizens' Rights programs were sent to work in five cities that the AFSC believed to be most subjected to

repressive surveillance: Baltimore, Philadelphia, Los Angeles, Jackson, and Seattle. After three and a half years of work in these cities, the AFSC members published a report summarizing their findings: "Local, state, and federal agencies, joined by private and quasi-private groups, coordinate their surveillance, and share information, misinformation, and opinions. This 'intelligence' activity remains largely uncontrolled, and poses a grave threat to constitutional rights of freedom of expression, due process, and privacy."[517] For example, the AFSC issued a "Report on Philadelphia Police Abuse Project" as part of its citizens' rights program, which began in August 1977 to help various groups work together against police abuse in the city and facilitate conversation with city officials and members of the police force. The objectives were to place as many groups as possible into a network that demanded accountability of police and city officials, and to empower victim communities by giving them more agency over how certain decisions affected their communities. Among many tasks, the staff of this program prepared testimonies for hearings of the State Assembly's Subcommittee on Crime and Correlations, which had that year been considering legislation to prevent police abuse.

The AFSC members who worked on Government Surveillance and Citizens' Rights programs further emphasized that the intimidation, dossier keeping, and surveillance tactics of the government particularly affected the poor, as well as blacks, Hispanics, and other minorities, and had generally inhibited lawful dissent against injustices. Louis Schneider commented on governmental surveillance tactics on behalf of the AFSC: "The expansion of the police intelligence apparatus has been marked by an absence of clear-cut guidelines and effective oversight, which has left intelligence units free to expand their spheres of operation far beyond the limits of criminal investigation."[518] Schneider argued there should not have had been a

double standard for how the government treated American citizens at home compared to how it treated Americans or non-Americans abroad, foreshadowing a major criticism of PRISM in the post-September 11 era. He also called for the regulation of data collected in computer systems.[519] Schneider went one step further, calling for greater examination by citizens, officials, and media representatives alike, to prevent the infringement of citizens' rights.

## VI. Conclusion

J. Edgar Hoover tried to restructure the FBI by centralizing his authority within the organization. His intention backfired, however, as agents from offices around the country challenged Hoover's stance on the threat that the Service Committee posed. The Philadelphia FBI office in particular resisted Hoover's surveillance of the AFSC Quakers. Their resistance can be attributed to the insider status of both Quakers and AFSC members in American society, which would have been particularly evident to FBI agents based in Philadelphia who maintained personal or undercover contacts with the leading figures of the Service Committee and the Society of Friends. The efforts of Quaker and AFSC activists would ultimately unveil surveillance of numerous citizen groups that the FBI worked so hard to conceal.

The AFSC, in turn, was shaped by the rise of civil liberties in the postwar period, as well as by its Quaker-rooted commitment to social justice. The organization consciously hired non-Quaker members who identified with Quaker ideals in order to professionalize the organization through long-term employees, and to promote the radicalism necessary to execute projects abroad, sometimes at the expense of unrelenting pacifism. AFSC members suspected that its organization was under surveillance, but it was not until the "Chicago 8" trial and later the COINTELPRO revelation that their suspicions were confirmed. The Service Committee

underwent a second major reordering to focus on its own legal defense, as well as the defense of other surveilled organizations, following the exposure of mass governmental surveillance in the 1970s. It not only continued to engage in radical activities, but it began to mobilize and partake in legal defenses against unjustified governmental spying of citizen organizations.

Governmental surveillance of the American Friends Service Committee offered a glimpse into how the fear that communism had permeated the Quaker group coerced government agencies to surveil a highly respected, socially acclimated, religiously affiliated organization. Despite the bewilderment articulated by many AFSC members about their surveillance, the FBI files revealed that FBI agents did not all blindly follow J. Edgar Hoover's prescription to cure the alleged communist invasion of the Service Committee. Many FBI agents, in particular those of Philadelphia and at times Hoover himself, displayed nuanced, thoughtful attempts to deconstruct Quakerism and trace the relationship between the Society of Friends and the American Friends Service Committee. Yet his prudent agents, aware of the rising demand for civil liberties by the American public, realized that disaster could ensue should it later be revealed that the FBI was wrongfully surveilling a respectable, lawful organization. That disaster would have multiplied if the boundary between the Society of Friends and the AFSC was found to be less than clearcut, given the legal and cultural protections of the freedom of religious expression in the United States.

J. Edgar Hoover did not live to see the unwinding of the secrecy of his once protected organization. But the legacy of the American Friends Service Committee would persist through its campaign to cease government spying and to protect those who were less willing or able to protect themselves. The FBI files that William C. Davidon and others dispatched to the nation

did not end government surveillance of American citizens. American Muslims would resume this fight over forty years later, this time against a local government agency, the New York Police Department. AFSC retaliation against localized FBI surveillance, such as through its Campaign to Stop Government Spying, foreshadowed the imminent threat not just of federal, but also local and state government surveillance.

---

[351] Editors, preface to "Watching for Cominfil: Even the Quakers Scared the FBI," by Ann Morrissett Davidon, *The Nation*, March 11, 1978, 266.

[352] Austin, *Quaker Brotherhood*, 9.

[353] Descriptive Summary, Ann Morrissett Davidon and William C. Davidon Papers (DG 144), Swarthmore College Peace Collection, last updated August 21, 2015, last accessed February 24, 2016, https://www.swarthmore.edu/library/peace/DG100-150/dg144davidon.htm.

[354] Ann Morrissett Davidon, "Watching for Cominfil: Even the Quakers Scared the FBI," *The Nation*, March 11, 1978, 266-269.

[355] Ivan Greenberg, *The Dangers of Dissent: The FBI and Civil Liberties since 1965* (New York: Lexington Books, 2010), 98.

[356] Patricia Appelbaum, *Kingdom to Commune: Protestant Pacifist Culture between World War I and the Vietnam Era* (Chapel Hill: University of North Carolina Press, 2009), 44.

[357] Allan W. Austin, *Quaker Brotherhood: Interracial Activism and the American Friends Service Committee, 1917-1950* (Urbana: University of Illinois Press, 2012), 10.

[358] Paul Baumgardner, "Reevaluating *Reynolds*: The Constitutional Case for Religiously Motivated Polygamy," *Journal of Politics and Law* 6, no. 1 (2013): 1, doi:10.5539/jpl.v6n1p1.

[359] Baumgardner, "Reevaluating *Reynolds*," 3.

[360] Baumgardner, "Reevaluating *Reynolds*," 3.

[361] Austin, *Quaker Brotherhood*, 2.

[362] J. William Frost, "'Our Deeds Carry Our Message': The Early History of the American Friends Service Committee," *Quaker History* 81, no. 1 (1992), 4.

[363] Gerald Jones, *On Doing Good* (New York: Charles Scribner's Sons, 1971), 13.

[364] Thomas D. Hamm, *The Quakers in America* (New York: Columbia University Press, 2003), 178.

[365] Ingle, "The American Friends Service Committee," 34.

[366] H. Larry Ingle, "The American Friends Service Committee, 1947-49: The Cold War's Effect," *Peace & Change* 23, no. 1 (1998): 32, accessed March 7, 2016, doi: 10.1111/0149-0508.691998035.

[367] William R. Hutchison, "Protestantism as Establishment," in *Between the Times: The Travail of the Protestant Establishment in America, 1900–1960*, ed. William R. Hutchison (New York: Cambridge University Press, 1989), 6.

[368] Austin, *Quaker Brotherhood*, 5.

[369] Frost, "'Our Deeds Carry Our Message,'" 1.

[370] Marvin R. Weisbord, *Some Form of Peace: True Stories of the American Friends Service Committee at Home and Abroad* (New York: The Viking Press, 1968).

[371] John Forbes, *The Quaker Star Under Seven Flags: 1917-1927* (Philadelphia: University of Pennsylvania Press, 1962).

[372] Clarence E. Pickett, *For More Than Bread: An Autobiographical Account of Twenty-Two Years' Work with the American Friends Service Committee* (Boston: Little, Brown and Company, 1953).

[373] Austin, *Quaker Brotherhood*, 7.

[374] Paul E. Brink, American Friends Service Committee, "Major Report Concludes that Political Spying by Police Exists on Large Scale," news release, March 30, 1979, 3.

[375] Hamm, *The Quakers in America*, 175-176.

[376] Austin, *Quaker Brotherhood*, 13.

[377] Ingle, "The American Friends Service Committee, 1947-49," 28.

[378] Frederick A. O. Schwarz, Jr., "An Historic Perspective of Intelligence Gathering," in *Domestic Intelligence: Our Rights and Our Safety*, ed. Faiza Patel (New York: Brennan Center for Justice at New York University School of Law, 2013), 53.

[379] Gary Gerstle, *Liberty and Coercion: The Paradox of American Government From the Founding to the Present* (Princeton: Princeton University Press, 2015), 139-142.

[380] Gerstle, *Liberty and Coercion*, 140.

[381] Ann Morrissett Davidon, "Freedom for Americans: 1976" draft (Philadelphia: AFSC, 1976), 12.

[382] Gerstle, *Liberty and Coercion*, 253-256.

[383] Gerstle, *Liberty and Coercion*, 261.

[384] Gerstle, *Liberty and Coercion*, 349.

[385] Legal historian Jeremy K. Kessler has challenged the traditional explanation of the rise of civil liberties, which claims that progressives turned to civil liberties to limit the extensive reach of the state in suppressing dissent. Instead, he argues that lawyers in the executive branch itself led the fight for civil libertarianism, strengthening the administrative state in the process. See Jeremy K. Kessler, "The Administrative Origins of Modern Civil Liberties Law," *Columbia Law Review* 114, no. 5 (2014): 1083-1084.

Historian Eric Foner has added that the American use of democracy and freedom as ideological tools of war, which distinguished the United States from Germany, inspired demands for civil liberties on the American domestic front. See Eric Foner, *The Story of American Freedom* (New York: W.W. Norton & Company, 1998), 171.

[386] Foner, *The Story of American Freedom*, 177.

[387] Gerstle, *Liberty and Coercion*, 82-85.

[388] Foner, *The Story of American Freedom*, 183.

[389] Michael Schudson, *The Rise of the Right to Know: Politics and the Culture of Transparency, 1945-1975* (Cambridge: The Belknap Press of Harvard University Press, 2016), 25.

[390] Schudson, *The Rise of the Right to Know*, 46.

[391] Schudson, *The Rise of the Right to Know*, 54.

[392] Schudson, *The Rise of the Right to Know*, 56.

[393] Schudson, *The Rise of the Right to Know*, 29; 34-35.

[394] Ann Morrissett Davidon, *The War at Home: An AFSC Report* (Philadelphia: AFSC, 1976), 6.

[395] Davidon, "Freedom for Americans: 1976," 9.

[396] The Inspector General, Office of Special Investigations, United States Air Force, "Report of Investigation: Propaganda Concerning Missile Base, Francis E. Warren AFB, Wyoming," 31 October 1958, "Air Force" folder, "CIA/Air Force/Army/Navy" box #5, AFSC Archives, 1.

[397] Memorandum to FBI Director from SAC Philadelphia, re. AFSC, 17 March 1967, item #48, folder #3, "FOIA" box #1, AFSC Archives, 1-2.

[398] Lester M. Jones, *Quakers in Action: Recent Humanitarian and Reform Activities of the American Quakers* (New York: The Macmillan Company, 1929), 19.

[399] Jones, *Quakers in Action*, 22.

[400] Jack Sutters, "Warmth and Sweetness: The Beginnings of a Postwar Feeding Program in Germany," American Friends Service Committee, last modified March 29, 2010, last accessed February 23, 2016, https://afsc.org/story/warmth-and-sweetness-beginnings-postwar-feeding-program-germany.

[401] "Herbert Clark Hoover: A Biographical Sketch," Herbert Hoover Presidential Library Museum, last accessed February 23, 2016, http://hoover.archives.gov/education/hooverbio.html.

[402] Jones, *On Doing Good*, 176-177.

[403] Frost, "'Our Deeds Carry Our Message,'" 3.

[404] Frost, "'Our Deeds Carry Our Message,'" 6.

[405] Ingle, "The American Friends Service Committee, 1947-49," 27.

[406] Austin, *Quaker Brotherhood*, 9-11.

[407] Austin, *Quaker Brotherhood*, 11.

[408] Janet Whitney, introduction to *The Quaker Approach to Contemporary Problems*, ed. John Kavanaugh (New York: G. P. Putnam's Sons, 1953), ix.

[409] Whitney, introduction to *The Quaker Approach to Contemporary Problems*, ix.

[410] Introduction to *The American Friends Service Committee* FBI report, 24 November 1943, file #100-11392, section #5, folder #2, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 2.

[411] Introduction to *The American Friends Service Committee* FBI report, 3.

[412] Introduction to *The American Friends Service Committee* FBI report, 3.

[413] Introduction to *The American Friends Service Committee* FBI report, 7.

[414] Davidon, "Freedom for Americans: 1976" draft, 8.

[415] Brink, "Major Report Concludes that Political Spying by Police Exists on Large Scale," 3.

[416] Citizen to John Edgar Hoover, 4 March 1966, item #19, folder #1, "FOIA" box #1, AFSC Archives.

[417] John Edgar Hoover to citizen, 6 March 1966, item #19, folder #1, "FOIA" box #1, AFSC Archives.

[418] Davidon, "Freedom for Americans: 1976" draft, 3.

[419] Davidon, *The War at Home: An AFSC Report*, 16.

[420] Davidon, "Watching for Cominfil," 267.

[421] AFSC, "Why the People's Blockade?," March 2, 2016, http://afsc.org/document/why-people%E2%80%99s-blockade-1972.

[422] Davidon, *The War at Home: An AFSC Report*, 30.

[423] Davidon, *The War at Home: An AFSC Report*, 30.

[424] Davidon, "Watching for Cominfil," 267.

[425] Davidon, "Freedom for Americans: 1976" draft, 9-10.

[426] John Edgar Hoover, letter to the editor, *Commonweal*, June 9, 1950, reprinted February 26, 1999.

[427] Randall Stephens, "Surprising or Otherwise Interesting Primary Sources, IX: Jedgar on Sunday School," *Religion in American History* (blog), October 27, 2010, http://usreligion.blogspot.com/2010/10/surprising-or-otherwise-interesting.html.

[428] *Investigation of Un-American Propaganda Activities in the United States, Hearings on H. R. 1884 and H. R. 2122, Bills to Curb or Outlaw the Communist Party of the United States, Part 2, Before the Committee on Un-American Activities*, 80th Cong. 1 (1947) (statement of John Edgar Hoover, Director of the Federal Bureau of Investigation).

[429] John Edgar Hoover, "Communism: A False Religion," *Human Events* XV, April 21, 1958, 1.

[430] Hoover, "Communism," 2.

[431] Hoover, "Communism," 2.

[432] Hoover, "Communism," 3.

[433] Hoover, "Communism," 4.

[434] Hoover, "Communism," 4.

[435] Davidon "Freedom for Americans: 1976" draft, 10.

[436] Davidon, *The War at Home: An AFSC Report*, 9.

[437] Davidon, *The War at Home: An AFSC Report*, 11.

[438] Davidon, *The War at Home: An AFSC Report*, 11.

[439] Headquarters Fourth United States Army, "Organizational Study, American Friends Service Committee (AFSC)," 5 June 1957, "Air Force" folder, "CIA/Air Force/Army/Navy" box #5, AFSC Archives, 2.

[440] Headquarters Fourth United States Army, "Organizational Study, American Friends Service Committee (AFSC)," AFSC Archives, 4.

[441] Davidon, *The War at Home: An AFSC Report*, 9.

[442] Davidon, "Freedom for Americans: 1976" draft, 11.

[443] Davidon, "Freedom for Americans: 1976" draft, 11.

[444] Austin, *Quaker Brotherhood*, 9.

[445] Davidon, "Freedom for Americans: 1976" draft, 11.

[446] Davidon, *The War at Home: An AFSC Report*, 17.

[447] Davidon, *The War at Home: An AFSC Report*, 18.

[448] Helena Michie, "Summary of Files," 20 February 1980, folder #1, section #1, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1.

[449] Ann Morrissett Davidon, "Report to AFSC Board Executive Meeting on FBI Files," 12 March 1976, "Government Surveillance" folder, AFSC Archives, 1.

[450] FBI memorandum, "American Friends Service Committee," 13 February 1941, folder #1, section 1, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 4.

[451] FBI Report, "Peace Caravan: American Friends Service Committee," 18 August 1941, folder #1, section #1, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 2.

[452] Introduction to *The American Friends Service Committee* FBI report, 1.

[453] Introduction to *The American Friends Service Committee* FBI report, 1.

[454] "Introduction" in "The American Friends Service Committee," 1.

[455] Prepared by Bernard J. Sweeney, Chief of the Counter Intelligence Branch, ZI Intelligence Division, Second Army, Fort George G. Meade, Maryland.

[456] SAC Baltimore Report, "American Friends Service Committee, Internal Security," 17 November 1947, folder #3, section #3, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1.

[457] Davidon, "Report to AFSC Board Executive Meeting on FBI Files," 2.

[458] SAC Seattle Report, "American Friends Service Committee," 11 August 1949, folder #4, section #3, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 2.

[459] SAC Seattle Report, "American Friends Service Committee," 1.

[460] Davidon, "Report to AFSC Board Executive Meeting on FBI Files," 3.

[461] Davidon, "Report to AFSC Board Executive Meeting on FBI Files," 3-4.

[462] Davidon, "Report to AFSC Board Executive Meeting on FBI Files," 3.

[463] Davidon, "Report to AFSC Board Executive Meeting on FBI Files," 3.

[464] Helene Michie, "Narrative Summary of Materials Received by AFSC from FBI on Appeal, March 24, 1980," 5 May 1980, folder #4, section #5, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-2.

[465] Philadelphia SAC Report, "Communist Infiltration of the American Friends Service Committee," 25 February 1955, folder #4, section #5, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1.

[466] SAC Chicago Report, "Communist Infiltration of the American Friends Service Committee," 3 June 1955, folder #4, section #6, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-9.

[467] SAC San Francisco Report, "Communist Infiltration of the American Friends Service Committee," October 1955, folder #4, section #6, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-18.

[468] SAC Houston Report, "Communist Infiltration of the American Friends Service Committee," 20 June 1955, folder #4, section #6, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-5.

[469] SAC Charlotte Report, "Communist Infiltration of the American Friends Service Committee," 31 May 1955, folder #4, section #6, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1.

[470] *American National Biography Online*, s.v. "Nearing, Scott," by John A. Saltmarsh, accessed May 4, 2016, http://www.anb.org/articles/14/14-00436.html.

[471] District Intelligence Office, Fourth Naval District, Philadelphia, Section B, "Characterizations of Organizations," 49, of Section VI, "Association with Organizations Designated by the United States Attorney, General Pursuant to Executive Order 10450," in *American Friends Service Committee and Kindred Organizations*, October 28, 1943, folder #4, section #5, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 45-50.

[472] District Intelligence Office, Section B, "Characterizations of Organizations," 49.

[473] District Intelligence Office, Fourth Naval District, Philadelphia, Section C, "Statements Issued by the AFSC," 24, of Section III, "Activities" in *American Friends Service Committee and Kindred Organizations*, October 28, 1943, folder #4, section #5, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 13-37.

[474] Helene Michie, "Narrative Summary of Materials Received by AFSC from FBI on Appeal, March 24, 1980," 5 May 1980, folder #4, section #6, FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-2.

[475] SAC Cincinnati Report, "Communist Infiltration of the American Friends Service Committee," 3 June 1955, folder #4, section #6, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-8.

[476] *American National Biography Online*, s.v. "Muste, Abraham Johannes," by Clyde W. Barrow, accessed May 4, 2016, http://www.anb.org/articles/15/15-00502.html.

[477] Olcutt Sanders, memorandum, "Literature Impounding," 28 April 1955, "Communism Critiques" folder, "Criticisms and Investigations" file, AFSC Archives, 1-2.

[478] SAC Omaha Report, "Communist Infiltration of the American Friends Service Committee," 26 May 1955, folder #4, section #6, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-3.

[479] SAC Philadelphia Report, 26 June 1956, folder #3, "FOIA" box #1, AFSC Archives, 3.

[480] Helene Michie, "Summary Report of FBI File," April 1980, "FBI Material Rec. on Appeal, 4/80" box #4, folder #4, section #7, AFSC Archives, 1-2.

[481] SAC Chicago, memorandum to John Edgar Hoover, "Communist Party Front Organizations and Infiltration of Right Led Organizations, Internal Security–C," 12 October 1956, folder #4, section #7, FBI Material Rec. on Appeal, 4/80 box #4, AFSC Archives, 10.

[482] A. H. Belmont, memorandum to G. A. Day, "Picketing of the Pentagon" 13 November 1960, folder #4, section #9 "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives.

[483] SAC Seattle Report, 23 February 1967, folder #3, "FOIA" box #1, AFSC Archives, 1-2.

[484] Helene Michie, "Summary Report of FBI File," April 1980, folder #4, section #8,"FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives.

[485] John Edgar Hoover, memorandum to SAC Seattle, "Proposed Peace March, Seattle Washington, April 21, 1962, Information Concerning (Internal Security)," 21 March 1962, folder #4, section #10, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1.

[486] Helene Michie, "Summary Report of FBI File," April 1980, folder #4, section #10, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-2.

[487] SAC Philadelphia, memorandum to John Edgar Hoover, "American Friends Service Committee, Incorporated Information Concerning (Internal Security)," 22 March 1962, folder #4, section #10, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 3

[488] Helene Michie, "Summary Report of FBI File," April 1980, folder #4, section #10, "FBI Material Rec. on Appeal, 4/80" box #4, AFSC Archives, 1-2.

[489] FBI file, item #2, 1 January 1966, "FBI materials" folders #1, 1-1 through 50-2, folder #2, 51-1 through 85-19, folder #3, 86-1–98-2, "FOIA" box #1, AFSC Archives.

[490] Suzanne Labin, *The Techniques of Soviet Propaganda: A Study Presented by the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary United States Senate*, *86th Congress, 2d Session* (Washington: United States Government Printing Office, 1960), 17.

[491] "Colin Bell Speaks for the AFSC," *Focus*, July 21, 1965, "Criticisms and Investigations" file, "Senate Subcommittee Report, July 1965" folder, AFSC Archives.

[492] "Colin Bell Speaks for the AFSC," *Focus*, July 21, 1965.

[493] Thomas J. Dodd, "Repudiation of Attack on American Friends Service Committee," *Congressional Record, Proceedings and Debates of the 89th Congress, 1st Session*, "Criticisms and Investigations" file, "Senate Subcommittee Report, July 1965" folder, AFSC Archives.

[494] Hugh Scott, "Undocumented Charge Against the American Friends Service Committee," *Congressional Record*, *Proceedings and Debates of the 89th Congress, First Session*, "Criticisms and Investigations" file, "Senate Subcommittee Report, July 1965" folder, AFSC Archives.

[495] Scott, "Undocument Charge Against the American Friends Service Committee."

[496] Ann Davidon, "Summary of Files," 6 June 1977, "FOIA" box #1, folder #1, 1-1 through 50-2, folder #2, 51-1 through 85-19, folder #3, 86-1–98-2, AFSC Archives.

[497] Davidon, "Waching for Cominfil," 268.

[498] Jones, *On Doing Good*, 142-143.

[499] Jones, *On Doing Good*, 142.

[500] Davidon, "Freedom for Americans: 1976" draft, 4.

[501] Davidon, "Freedom for Americans: 1976" draft, 16.

[502] Davidon, *The War at Home: An AFSC Report*, 6.

[503] Davidon, "Watching for Cominfil," 268.

[504] Davidon, "Watching for Cominfil," 268.

[505] Mark Mazzetti, "Burglars Who Took on F.B.I. Abandon Shadows," *New York Times*, January 7, 2014, http://www.nytimes.com/2014/01/07/us/burglars-who-took-on-fbi-abandon-shadows.html.

[506] Davidon, “Freedom for Americans: 1976” draft, 7.

[507] Davidon, “Freedom for Americans: 1976” draft, 19.

[508] Davidon, *The War at Home: An AFSC Report*, 1.

[509] Davidon, *The War at Home: An AFSC Report*, 36, 39.

[510] Paul E. Brink, American Friends Service Committee, “AFSC Release,” news release, May 27, 1976, 1.

[511] Brink, “AFSC Release,” 1.

[512] Brink, “AFSC Release,” 1.

[513] Brink, “AFSC Release,” 1.

[514] Before appeal, the AFSC received the following number of pages: 365 from the FBI, 190 from the Air Force, 396 from the CIA, 88 from the Navy, 141 from the Internal Revenue Service, and 66 from the Secret Service. The National Security Agency (NSA) provided a “watch list” to the Defense Intelligence Agency (DIA) and five other agencies, a list which included the AFSC.

[515] Paul E. Brink, “AFSC Release,” news release, July 11, 1978, 1.

[516] Brink, “Major Report Concludes that Political Spying by Police Exists on Large Scale,” 2.

[517] Brink, “Major Report Concludes that Political Spying by Police Exists on Large Scale,” 1.

[518] Brink, “Major Report Concludes that Political Spying by Police Exists on Large Scale,” 2.

[519] Brink, “Major Report Concludes that Political Spying by Police Exists on Large Scale,” 2.

Chapter 4. The Muslims of Brooklyn, New York: Predicting Terrorism After September 11

"You're going to have to watch and study the mosques, because a lot of talk is going on at the mosques. And from what I heard, in the old days, meaning awhile ago, we had great surveillance going on in and around mosques in New York City."[520] — Donald Trump on *Morning Joe* (November 15, 2015)

## I. Introduction

Ten years after the attacks on the World Trade Center, the Associated Press exposed the New York Police Department (NYPD) surveillance of Brooklyn-based Muslims, prompting a national discussion about the infringement of civil liberties.[521] A handful of the surveilled Brooklynites in *Raza v. City of New York* filed suit in June 2013 in the United States District Court for the Eastern District of New York. The case was settled in January 2016. The *Raza* plaintiffs argued that they were targeted by the NYPD because of their Islamic beliefs and affiliations. The plaintiffs, backed by a number of civil liberties groups, argued that the NYPD violated the United States and New York State Constitutions by discriminating against individuals based on their religion.[522] Subsequently, the NYPD observed the communities of those individuals. This chapter analyzes the *Raza* transcript to understand the NYPD surveillance program. The transcript indicates how the NYPD reconciled its understanding of Islam with its surveillance program. In contrast to the prior two cases, this case study is an example in which a government agency tried to predict action by monitoring religious expression, rather than surveilling criminal activity.

In addition, there were obvious differences between the social context of this case and those of the first two cases. The Islamic identities of the *Raza* plaintiffs contributed to their

outsider status, which was similar to the outsider status of the Mormons but quite distinctive from the insider status of the AFSC Quakers. The NYPD surveilled Brooklyn Muslims in a comparatively pluralistic culture compared to the cultures of the Mormons and AFSC Quakers.[523] The Mormons and AFSC Quakers tried to build their organizational identities against the Protestant origins of their respective institutions. The Muslim *Raza* plaintiffs, in turn, augmented their outsider status by practicing a non-Protestant religion.

**II. Radicalizaton**

The 2007 NYPD report, *Radicalization in the West: The Homegrown Threat*, was prepared by two Senior Intelligence Analysts in the NYPD Intelligence Division and graduates of the Columbia University School of International and Public Affairs (SIPA): Mitchell D. Silber, a SIPA lecturer, and Arvin Bhatt, an economic affairs officer for the U.S. Department of State. NYPD police officers used the report to predict radicalism. Police Commissioner Raymond W. Kelly characterized the report as an attempt to examine how the "intention" for conducting terrorism "forms, hardens and leads to an attack or attempted attack using real world case studies."[524] Silber and Bhatt developed a theoretical framework to predict all forms of radicalism based on the specific details from just a handful of terrorism cases. The case studies they selected were three homegrown terrorism cases in Lackawana, New York; Portland, Oregon, and northern Virginia; and two New York City-based cases.

The *Radicalization in the West* report was the primary written source of authority for the NYPD surveillance program. NYPD personnel used the report to train officers in detecting potential terrorists who held Islamic beliefs or engaged in Islamic practices. The report alleged that "[e]nclaves of ethnic populations that are largely Muslim often serve as 'ideological

sanctuaries' for the seeds of radical thought."[525] It dissected a complex goal, detecting terrorism, into a four-phase process. Critics of the report claimed it condoned religious and racial profiling through observing characteristics that offered no consistent connection to terrorism. As Aziz Huq argued, the report drew conclusions about "the meaning of religious conduct" based on five cases that showed connections between religious conduct and terrorism, while ignoring millions of cases that lacked the connection.[526]

Based on the *Radicalization in the West* report, officers were expected to think broadly about the possibility that anyone could be a terrorist, including college students, members of middle-class families, unemployed people, new immigrants, second and third generation immigrants, and criminals. The report identified "radicalization incubators" such as mosques, cafes, "cab driver hangouts," nongovernmental organizations, student associations, hookah bars, butter shops, and bookstores. It identified at least two-hundred and sixty-three "hot spots" that were owned or attended by Muslims.

Commissioner Kelly added that the NYPD prioritized understanding what drove and defined the radicalization process, effectively stating that the surveillance program was based on tracing the evolution of the terrorist, rather than surveilling terrorists themselves. Silber and Bhatt wrote that before a rise of terrorist attacks around the world in the early 2000s, they would have studied the planning of an attack, but they instead focused on "a much earlier point–a point where we believe the potential terrorist or group of terrorists begin and progress through a process of radicalization."[527] In other words, they aimed to predict terrorism before suspected terrorists even developed their plans.

Silber and Bhatt pointed to jihadi-Salafi ideology as the motivation behind radicalization, which they argued drove young Western-born or residing men and women to carry out acts of terrorism in their home or host countries. They included a few sentences on the history of the larger Salafi movement, stating that the goal of the Sunni revivalist movement was to create a pure society modeled after a literal reading of the Quran, and after seventh-century Arabian social practices. Moreover, they wrote that implementing sharia law and a worldwide Caliphate were two goals of Islamic terrorism, and that contemporary Saudi Wahhabi scholarship, which justified these goals, promoted intolerance toward unbelievers. Silber and Bhatt claimed that the Egyptian intellectual Sayyid Qutb, who believed Islam was under attack from the West, shaped the political dimension of jihadi-Salafi ideology.[528] In summary, the authors did try to outline the religious and political dimensions of this ideology, showing an attempt to understand Islam as part of creating a surveillance system for the NYPD. Therefore, they rightfully did not ignore religious belief in their report. Yet in providing NYPD officers with the subsequent four-phase model for detecting terrorism, they did not successfully integrate a comprehensive understanding of the religion into the resulting instructions used and expected by police officers.

The core of the report, which the NYPD removed from its website after the *Raza* settlement, centered on four distinct phases of radicalization as follows: pre-radicalization, self-identification, indoctrination, and jihadization. Silber and Bhatt acknowledged that individuals sometimes abandoned the radicalization process, and that they did not always follow the phases in a linear manner. Nonetheless, they claimed that those who passed through all four phases were likely planning or implementing a terrorist attack.[529] The report encouraged intervening early in

the radicalization process, prior to the planning phase.[530] This instruction led to the profiling of many individuals who possessed no real connections to terrorist activities.

Silber and Bhatt defined stage one, pre-radicalization, as the point of origin of individuals preceding the radicalization process, "before they were exposed to and adopted jihadi-Salafi Islam as their own ideology."[531] They claimed that most of these individuals had unremarkable lives and ordinary jobs prior to that process. In stage two, or self-identification, individuals began to explore Salafi Islam while moving away from their old identities and toward those of like-minded people. Silber and Bhatt characterized the motivation for this stage as an economic, social, political, or personal crisis that disrupted individuals' beliefs and opened them to "new worldviews [sic]."[532]

In the third stage of the report, called indoctrination, individuals strengthened their beliefs by fully embracing Salafi Islam and militant jihad, often under the direction of a "spiritual sanctioner" who advocated jihad.[533] While acknowledging the role of this leader, Silber and Bhatt emphasized the importance of group identity in this stage. In jihadization, stage four, members of the group of like-minded people accepted their obligation to participate in jihad and began planning attacks. This final stage could occur only over a few weeks or months, while the first three phases generally transpired over two to three years. They also privileged the communicative role of the Internet in this framework, claiming that the Internet provided direct access to extremist ideology, functioned as an anonymous virtual meeting place, and enabled jihadists to acquire information on their targets.[534] Silber and Bhatt argued that these four phases were evident in several case studies they reviewed.[535] Yet even if they accurately developed a

framework from preexisting terrorist cases, the authors did not thoroughly consider whether the framework was discriminatory or useful for predicting future terrorist cases.

The fact that Silber and Bhatt brandished their report as a "tool for predictability"[536] suggested that the NYPD surveillance program was fundamentally distinctive from the monitoring systems of the previous two case studies, which did not attempt to predict subversion. Moreover, the content of the report indicated the lack of knowledge within the NYPD about Islam, despite the authors' attempt to outline the political and religious dimensions of jihadi-Salafi Islam. For example, the NYPD report pointed to beard growing as one indicator of radicalization in several case studies. Some Muslims wear beards to honor the Prophet Mohammad, based on the Hadîth, or reports on the sayings of Muhammad passed along from generation to generation.[537] However, Muslim men and women around the world differ in how they reconcile their hairstyles with their religious beliefs, disagreeing about the requirement of wearing beards or veils at all. Islamic studies scholar Ingrid Pfluger-Schindlbeck has argued that hair manifests in Islamic societies either in religious texts, such as the Hadîth or Qur'an; institutional rules about the sexual body; or forms of sacrifice revealing an asexual human body.[538] Growing the beard, in short, is a form of Islamic religious expression that varies across Islamic traditions, and more importantly, does not correlate with radicalization.

The fourth phase of the report suggested that the NYPD had been moving away from surveilling action and increasingly toward preemptive surveillance, in which government agents probed the *Raza* plaintiffs on their thoughts on politics and current events. Faiza Patel of the Brennan Center for Justice at NYU Law argued that the report flagged religious belief as an indicator of radicalization, quoting the report: "Jihadist or jihadi-Salafi ideology […] guides

movements, identifies the issues, drives recruitment and is the basis for action."[539] Elizabeth Goitein at the Brennan Center suggested the NYPD and FBI agents have both looked for "ideological indicators," including seemingly innocuous acts such as wearing Islamic dress or receiving religious education abroad. They designed intelligence gathering practices around these ideological indicators, such as by placing informants inside of mosques.[540] Patel similarly suggested that gathering intelligence on Muslim Americans relied upon a "religious conveyer belt" model, in which suspects emerging from a personal grievance or crisis, to fervently adopting a religion, to adopting radical beliefs, to terrorism.[541]

The assumption that Islamic terrorists could be detected through four stages of radicalization reflected a point made by Islamic scholar William A. Graham, that there is no single entity of Islam but "many Islams" in distinctive local and regional contexts.[542] While the NYPD framework was arguably useful for police officers to conduct their jobs, a minimally basic understanding of the diversity within Islam would have better allowed the NYPD to fulfill its counterterrorism operations without infringing on the civil liberties of Muslim Americans. The reliance of NYPD officers on preemptive surveillance was markedly distinctive from the system for detecting polygamists in the Territory of Utah or from the cautious approaches of FBI agents to detect communist affiliations of the AFSC. The Supreme Court assessed the theological dimensions of polygamy after officers in the Territory of Utah had already collected information about polygamists. The FBI considered the relationship between Quakerism and communism simultaneous to its surveillance of the AFSC. The NYPD, on the other hand, used a predetermined report that was finalized well before its surveillance of Muslims.

Through its surveillance program, the NYPD simplified how to detect radical Islam with the intention of protecting national security. Law professor Geoffrey Stone argued in 2011, two years before the *Raza* "Complaint" was filed, there was "no definitive precedent, or even close to definitive precedent," on governmental surveillance of mosques chilling religious expression.[543] The absence of a legal precedent for this issue has made *Raza* all the more significant. Previously, according to legal scholar Aaron Baker, this form of "intelligence-led policing" meant that if police possessed information that an act of terrorism was more likely to be committed by a person of a certain race, they did not discriminate by policing individuals of that race more than those of other races. Intelligence-led policing, prior to *Raza*, permitted racial and religious profiling.[544]

The plaintiffs in *Raza*, listed below, included three citizens, two mosques, and a Muslim non-profit organization:[545]

1. Hamid Hassan Raza, an imam at Masjid Al-Ansar, was under NYPD surveillance since 2008. He led daily prayer services, hosted religious classes for the mosque community, and offered spiritual and personal counseling to congregants.

2. Masjid Al-Ansar, a Muslim house of worship founded in 2008 in Brooklyn, was under NYPD surveillance since its founding. It is registered as a tax-exempt non-profit organization under the name Al-Ansar Center, Inc. It hosts daily prayer services, provides religious education and counseling to congregants, and fosters a religious community with a focus on Muslim youth.

3. Asad ("Ace") Dandia, a Brooklyn resident, had been under surveillance since at least March 2012. He was a student at the City University of New York and the co-founder and

Vice President of Muslims Giving Back, a charity organization.

4. Muslims Giving Back was under surveillance since at least March 2012. It is an organization that engages in charitable activities, such as collecting donations from members and community members to provide food and assistance to low-income New York City residents, "in furtherance of Islam's central tenet of charity and assistance to the needy."[546] It also conducts outreach and awareness about Islam.

5. Masjid At-Taqwa, a Muslim house of worship founded in Brooklyn in 1981 and incorporated under the name, Masjid At-Taqwa, Inc., was under surveillance since at least 2004. Like the first mosque plaintiff, Masjid At-Taqwa holds daily prayer services, provides religious counseling and education to congregants, and tries to create an inclusive religious community.

6. Mohammad Elshinawy, a Brooklyn resident, was under surveillance since at least 2004. He taught lectures, classes, and sermons about Islam for about eleven years at various Muslim institutions throughout New York City.

The fact that two mosques were plaintiffs in this case highlighted the significance of *Raza* to Muslim American communities beyond those directly affected in New York City. Islamic studies scholar Ihsan Bagby has noted the importance of United States mosques, which have "served as the primary vehicle for the collective expression of Islam in the American Muslim community,"[547] symbolizing the existence of Islam in United States society. Governmental surveillance of mosques for this reason was particularly damaging to the collective spirit of Muslim American communities around the nation.

The plaintiffs insisted that the defendants violated the following: 1) the Equal Protection Clause of the Fourteenth Amendment, for targeting and discriminating against the plaintiffs for practicing Islam, without providing a legitimate government interest while stigmatizing Islam; 2) the Free Exercise Clause of the First Amendment and the New York State Constitution Right to Free Exercise of Religion, for placing a burden on the plaintiffs' ability to practice Islam without offering a generalized policy for surveilling religious institutions other than Islamic ones; and 3) the Establishment Clause of the First Amendment, for stigmatizing the plaintiffs, targeting their beliefs and practices as opposed to those of any other religious group, and inhibiting their abilities to practice their faith.[548] The defendants included the following:[549]

1. The City of New York, which had been responsible for the "policy, practice, supervision, implementation, and conduct of all NYPD matters and was responsible for the appointment, training, supervision, and conduct of all NYPD personnel";[550]
2. Michael R. Bloomberg, the Mayor of New York, who had supervisory authority over the NYPD;
3. Raymond W. Kelly, the Police Commissioner for New York, who also had supervisory authority over the NYPD; and
4. David Cohen, the Deputy Commissioner of Intelligence for New York City as of 2002, who had supervisory authority over the Intelligence Division of the NYPD and previously worked for the CIA for thirty-five years.

As listed above, the NYPD was not the only defendant under scrutiny for its surveillance program. The NYPD, though it operated without external constraints that ensured the program

was constitutional, did not exist in a vacuum during the period it surveilled Brooklyn Muslims. It was subjected to the local politics of New York and to post-September 11 federal politics.

The precedent for surveilling American citizens to ensure public safety was well in place when the NYPD developed its surveillance program. Weeks after the attacks on the World Trade Center, the George W. Bush administration expanded the authority of the federal government to surveil citizens through the jurisdiction of the 2001 Patriot Act. The act restricted checks and balances, including judicial oversight and the ability to challenge searches in court, which were meant to protect the public from governmental overreach. The attacks on the World Trade Center tested core American values, including the freedom of speech, the right to privacy, the protection from unreasonable search and seizure, and due process of the law.[551] The expansion of NYPD counterterrorism programs after the September 11 attacks was not unjustified, but it undermined the protection of citizens from unwarranted spying.

Yet the NYPD did face a major constraint in the immediate aftermath of September 11: the Handschu Guidelines. The Guidelines, devised from a 1985 civil suit settlement, restricted police investigations. After the September 11 attacks, the rules articulated in the Guidelines were weakened in 2003 and then restrengthened with the *Raza* settlement on January 7, 2016. We will first turn briefly to the Handschu Guidelines, and we will then examine the details of the *Raza* case and settlement.

**III. The Handschu Guidelines**

The *Raza* settlement was linked to an earlier federal case, *Handschu v. Special Services Division*, which was settled in 1985 but resurfaced in 2007 when the NYPD was accused of violating the agreement for videotaping two political demonstrations. When the *Handschu*

lawsuit was first filed in 1971, the activists of the Citizens' Commission to Investigate the FBI had not yet broken into the FBI office in Media, Pennsylvania, to expose COINTELPRO until later that year. In *Handschu*, protestors challenged the way the New York Police Department surveilled and gathered information on legal political protest activities and public expression, including by using informants, interrogation, and infiltration. Opponents of these practices, including the War Resisters League, the Gay Liberation Front, and the Black Panther Party, argued that the NYPD violated the First Amendment.

*Handschu* was settled in 1985 through the *Handschu* Guidelines, which offered three primary rules for lawful police surveillance of public expression.[552] First, the settlement constructed a threshold for establishing an investigation. NYPD officers had to provide "specific information" about imminent criminality before launching investigations of protected speech or other activities. Second, the NYPD agreed to only use undercover officers when they were crucial to the investigation, and to avoid maintaining files on individuals with no connections to crime. The third rule established authority over the NYPD. Officers had to submit investigation requests to two NYPD Deputy Commissioners and one mayor-appointed civilian.[553] In summary, according to the original Guidelines, the NYPD could investigate criminal activity, but not political activity. If the activity was a mix of criminal and political activities, only one section of the NYPD could investigate that activity based on a criminal predicate, and under the approval of the three-person authority.[554]

In 2003, Deputy Commissioner David Cohen, a top CIA director who was hired by the NYPD after the September 11 attacks, argued that the strictness of the Guidelines hampered NYPD "efforts every day."[555] He rationalized that, although an activity might be legal, it could

precede a terrorist attack. The NYPD petitioned the court to abolish the Guidelines. In response, a federal district judge ordered the Guidelines to be revised, but not eviscerated. First, the NYPD was not required to provide evidence of criminal activity prior to investigating Muslim American or immigrant communities, thereby lowering the standards set in the *Handschu* Guidelines. Second, the revisions removed the three-person review board previously established in *Handschu.* From that point on, the board could only review NYPD investigations after they had already been opened.[556] Additionally, only the Commissioner of Intelligence had to sign off on investigations. In lieu of the *Handschu* Guidelines, the NYPD adopted the post-September 11 Department of Justice surveillance guidelines, provided to the FBI to conduct antiterrorism investigations.[557] The NYPD, in summary, relied on the 2003 overhaul of the Guidelines for its new surveillance system that was later challenged in *Raza v. City of New York.*[558]

Critics of the 2003 revisions to the Guidelines did not take issue with police surveillance itself, but the surveillance of peaceful protestors and lawful citizens. The 2003 Guidelines would once again be revised in 2016 with the settlement of *Raza v. City of New York.* The *Handschu* lawyers joined the *Raza* lawyers to bring the original motion against the NYPD after the Associated Press reveal, and at the end, to weigh in on the *Raza* settlement. They claimed that the surveillance of Muslims violated the consent decree of *Handschu*, and that the Guidelines should have protected New York City residents from the religiously-based surveillance experienced by the *Raza* plaintiffs.

## IV. *Raza v. City of New York*

### A. Collection of Information

Contemporary government agencies collect information about potential terrorists at the local, state, and federal levels. The post-September 11 era, however, has not been distinctive in this way, for localized sources of intelligence were equally important in the Mormon and Quaker case studies. The NYPD spied on Muslim communities in the greater New York City area, including regions of New Jersey, Connecticut, and Pennsylvania, by using various tactics to collect information and then enter data into NYPD intelligence databases.[559]

The NYPD conducted its Muslim surveillance program since at least 2002, under the directions of the Deputy Commissioner of Intelligence, David Cohen, and his Intelligence Division. The program consisted of: 1) the Demographics Unit (renamed the Zone Assessment Unit); 2) the Intelligence Analysis Unit; 3) the Cyber Intelligence Unit; and 4) the Terrorism Interdiction Unit. Cohen oversaw the development of the program and hired Lawrence Sanchez, a CIA analyst, to handle the intelligence section. Sanchez claimed that one objective of the NYPD was to "protect New York City citizens from turning into terrorists," or to effectively detect terrorism before it even emerged by identifying behaviors that were "potential precursors to terrorism."[560] Sanchez's description indicated the NYPD embraced preemptive surveillance tactics. Under Sanchez's and Cohen's directions, the NYPD began to map where Muslim New Yorkers lived in the city, based on data from the 2000 United States census.

NYPD tactics for collecting data included: 1) mapping Muslim communities; religious, educational, and social institutions; and businesses in the greater New York City area through the NYPD Demographics Unit, which identified neighborhoods occupied by twenty-eight "ancestries of interest," including "American Black Muslims," but excluding Coptic Christian Egyptians or Iranian Jews; 2) taking photographic and video surveillance from cars outside of

mosques and on light poles aimed at mosques, and recording license plate numbers of cars parked outside of mosques during services; 3) directing police informants who were selected from arrestees, prisoners, or suspects, known as "mosque crawlers," to attend services at mosques and report the content of sermons and names of attendees, provide photographs from inside the mosques, and employ a "create and capture" method of "creating" conversations about terrorism and "capturing" the responses for the police; 4) instructing police "rakers," or teams of NYPD officers in civilian clothing, to blend into Muslim communities and collect information on those communities, including within restaurants and businesses; 5) maintaining intelligence databases of daily reports on the lives of Muslim New Yorkers; and 6) surveilling websites, blogs, and online forums. Police officers surveilled religious services and monitored conversations of congregants and leaders in mosques without having leads on any wrongdoings.[561] In August 2012, the Assistant Chief of the NYPD Intelligence Division, Lieutenant Thomas Golati, claimed under sworn testimony that during the six years of his tenure, conversations overheard by members of the Demographics Unit did not lead to a single criminal investigation.[562]

Undercover rakers, or plainclothes officers, entered neighborhoods with a certain proportion of Muslims of "ancestries of interest" to surveil public spaces such as bookstores, bars, and nightclubs. Mosque crawlers were informants who worked or lived in Muslim neighborhoods, monitoring sermons, conversations, and imams during Islamic gatherings, while recording conversations about current events and collecting lists of mosque attendee.[563] Islamic sermons, or khutbahs, were particularly helpful to Muslim Americans in dealing with anti-Islamic actions and sentiments after the September 11 attacks.[564] The NYPD even created spaces

to attract targets, including by establishing a sports leagues to spy on Muslim youth and noting where Muslims received haircuts. They labeled certain mosques as "Terrorism Enterprises," which permitted them to investigate any visitor of those mosques, and to monitor and record speech and sermons.[565]

The NYPD targeted over two-hundred and fifty mosques in New York and neighboring states. Each mosque was characterized by its ethnic orientation, leadership, and group affiliations, either deducted from outside surveillance or from inside the mosque itself. After consulting with rakers and informants, the NYPD then identified fifty-three mosques of particular concern, each of which received informants and plainclothes officers. However, Cohen intended to place an NYPD source in every mosque within two-hundred and fifty miles of New York City, and did so in many of them. The NYPD also placed video cameras outside of mosques, where they collected license plate numbers of attendees.

Beginning in 2003, the NYPD located Muslim New Yorkers based on a list of "ancestries of interest," including "American Black Muslims" and twenty-eight other countries or regions associated with the global Muslim population.[566] It used United States census data and information from I-9 immigration forms and government databases to find people associated with such "ancestries of interest." If the NYPD examined Iranian communities, for instance, it would mark Jewish or Christian people or institutions as not of interest to the NYPD.[567] It reused this system to analyze other ethnic communities. Whether the NYPD used this strategy intentionally, or inadvertently because of limited resources, the result was that Muslims were surveilled specifically over non-Muslims.

While many Muslims were surveilled by the NYPD, certain individuals were singled out for "real or perceived stronger devotion to their faith or to particular Islamic beliefs."[568] NYPD officers travelled to "hot spots" with particularly strong "devout clientele," and they targeted influential individuals. This strategy resonated with the initial policy of focusing on influential Mormons of the Utah Territory before officials shifted their focus to a wider range of Mormon people. Some NYPD informants instigated inflammatory conversations with Muslim New Yorkers. The plaintiffs argued this tactic was an invasive form of entrapment.

One technique, "create and capture," occurred when an informant "created" a conversation about a controversial topic, such as terrorism, and then "captured" the response in a report for the NYPD. Following his third arrest on misdemeanor drug charges, nineteen-year-old Shamiur Rahman worked as an informant for the NYPD. Rahman believed he was heroically protecting New York City. He received one and a half thousand dollars per month to monitor conversations in mosques and among Muslim youth, listen for buzzwords such as "jihad" or "revolution," report "radical rhetoric," take pictures of imams and congregants inside of mosques, collect cell phone numbers of congregants, and photograph the names of people who attended study groups and classes on Islam. He attended the 2012 Muslim Day Parade in Manhattan and photographed people. He also listened to a 2012 February lecture at the John Jay College of Criminal Justice. Rahman was instructed that the Muslim Student Association members of the college were "religious Muslims" and that the "NYPD consider[ed] being Muslim a terrorism indicator."[569] None of this collected information related to criminal activity, according to the plaintiffs.

Rahman admitted to his informant status once he believed the work was "detrimental to the Constitution."[570] When he informed the NYPD the Associated Press had contacted him, he stopped receiving text messages from his NYPD handler. Rahman claimed he never saw any criminal activities during his time as an informant.[571] The *Raza* case did not deny the right of the NYPD to protect citizens from possible terrorist attacks emanating from Islamic networks, but the settlement altered the conditions under which it could execute surveillance programs, as will be explained at the end of this chapter.

Up until the 2013 *Raza* complaint, the NYPD continued to use officers and informants to surveil mosques and Muslims, thereafter filing away that information. Michael Bloomberg, then Mayor of New York City, stated that the NYPD would move forward with the surveillance program even though no other religious institution or public institution was surveilled.[572] Three key themes emerged from the transcripts of the case: 1) whether or not the plaintiffs were preemptively targeted based on their religion; 2) how information was stored and circulated by both the NYPD and the plaintiffs; and 3) how the NYPD defined Muslim in the timeline of the surveillance program.

**B. The Testimonies**

The plaintiffs of *Raza* argued that the NYPD had "engaged in an unlawful policy and practice of religious profiling and suspicions surveillance of Muslim New Yorkers" that had "a false and unconstitutional premise: that Muslim religious belief and practices are a basis for law enforcement scrutiny."[573] They added that the Intelligence Division of the NYPD "singled out Muslim religious and community leaders, mosques, organizations, businesses, and individuals for pervasive surveillance that is not visited upon the public at large or upon institutions or

individuals belonging to any other religious faith."[574] The ACLU specified that the discriminatory Muslim surveillance program caused religious leaders to censor their speeches in mosques as well as in private religious counseling, and to record their sermons as a potential defense against future allegations by police officers or informants. Some religious leaders cited decreased attendance at mosques and increased suspicion of new congregants as NYPD informants. One charity and religious leader claimed his ability to raise funds was limited due to rising fear about surveillance within his community.[575]

The plaintiffs claimed that as a result of the NYPD program, their "religious goals, missions, and practices [were] profoundly harmed."[576] They gave the example that religious leaders and mosques among them had "curtailed the religious and personal guidance that they provide to congregants for fear that this guidance might be misconstrued by NYPD officers or informants, resulting in additional unjustified scrutiny, or worse."[577] Leaders and mosques also started to record sermons out of fear that statements would be taken out of context by NYPD officers or informants. "Plaintiff religious leaders' ministry, expression, and study have been significantly chilled."[578] Moreover, diminished attendance at the two mosques frightened constituents that new incoming people were informants. The plaintiffs argued that this "suspicionless [sic] surveillance" violated their constitutional rights of equal protection and free exercise of religion. They also sought an end to the NYPD surveillance program, despite the fact that the NYPD had allegedly destroyed relevant surveillance files by the time of the lawsuit,[579] perhaps out of fear of prosecution for illegal surveillance.

The *Raza* plaintiffs further argued that the signs the NYPD used to detect radicalization, including Islamic clothing, beards, and alcohol abstinence, condoned profiling Muslims based on

their religious beliefs and practices. To date, the Supreme Court has not defined religious belief, even though it distinguished belief from practice in response to the nineteenth-century Mormon polygamy cases. In the mid-twentieth century, the Supreme Court confirmed what religious belief did not constitute: recognition of a Supreme Being (*Torcaso v. Watkins* (U.S. 1961)) or origin in a traditional or organized religion (*Frazee v. Illinois Department of Employment Security* (U.S. 1989)).[580] The nuanced, case-by-case basis by which the Supreme Court has grappled with issues of religious belief paralleled the struggles of government agencies monitoring the Utah Mormons, AFSC Quakers, and Brooklyn Muslims. Territorial officials, FBI agents, and NYPD officers of each case, respectively, pondered over whether polygamy, communism-linked social justice, or Islamic terrorism accurately reflected the beliefs of the majority of each religious community. Much like the ongoing debates in the Supreme Court cases, these case studies have shown that the evolving definition of what did or did not constitute religious expression has shaped how government agencies define religion, and consequently, how they surveilled the religious organizations deemed threatening.

Imam Hamid Hassan Raza, more commonly known as Imam Raza, documented the effect of the surveillance program on his role as an imam at the mosque, Masjid Al-Ansar, in the complaint.[581] Concerned about the effects of surveillance on his community and his own legal rights, Imam Raza began recording his sermons on videos in case he was accused of something he did not say or that was misinterpreted out of context. He upgraded the video equipment of the mosque with funds from the mosque, and a congregant volunteer built a sound system to ensure clear, high-quality recordings of the sermons as a defense against potential allegations. Just as

the NYPD scouted preemptively for terrorism, Imam Raza defended himself preemptively from terrorist accusations.

Imam Raza recalled an incident in 2009 when NYPD officers, out of uniform, asked him for his driver's license. A year later, when his mosque received books from another mosque that was shutting down, two plainclothes NYPD officers approached him. They claimed they were responding to a complaint about the transportation of bags into the mosque and a double-parked van in the front. They wanted to investigate inside the mosque. In 2011, plainclothes NYPD officers claiming to represent the Department's community affairs branch stated they wanted to "get to know the community." This incident prompted the mosque to sponsor a few workshops a year later informing congregants of their civil rights, which the plaintiff mosque leaders argued detracted from the normal activities of the mosque.[582]

In 2012, Imam Raza met newcomers he suspected were potential informants because their interest in Islam seemed insincere. According to his account, one nervous, heavily breathing man claimed he wanted to become a Muslim. The man openly recorded Imam Raza with his phone, asking him about his views on the Afghanistan and Iraq wars, and whether Muslims should interact with Christians and Jews. Suspicious of this exchange, Imam Raza responded that he was more interested in local affairs, and that Muslims should live peacefully with Jews and Christians. Another newcomer that year was confrontational during a student practice exercise of a workshop about how to invite people to Islam. This individual was Shamiur Rahman, who later admitted on Facebook to his role as an NYPD informant.

Imam Raza became increasingly fearful with the occurrence of each of these incidents. As a result, he altered his religious sermons, teaching practices, and counsel on religious topics,

especially those pertaining to current events that might be perceived as controversial by the NYPD. One interpretation of the concept "jihad" is an internal struggle that does not lead to harm or injustice to another Muslim or non-Muslim person, according to Imam Raza. The term became an NYPD buzzword associated with the radicalization of Muslim youth. Imam Raza stated that in a surveillance-free environment, he would discuss with his congregants how jihad "concerns the internal and universal struggle for human self-improvement, that is a struggle in which all human beings are engaged, and that it is the most important struggle of Islam."[583] The misinterpretation of "jihad" is but one example of how the *Radicalization in the West* report oversimplified and misinterpreted Islam. An Islamic understanding of jihad as a struggle connects to the importance of understanding the Islamic sermon, the khutbah, as something other than a means for recruiting terrorists. During khutbahs, Muslims addressed their experiences of being Muslim in the post-September 11 era, while imams, or prayer leaders, offered interpretations of such challenges according to Quranic principles.[584]

Imams play a critical role in fostering dialogue among their constituents. For this reason, the NYPD officers or informants who entered mosques to collect information violated the religious expression of the preacher and listeners in the khutbah. Moreover, personal connectedness within Islam is central to the isnâd paradigm, which is derived from the Hadîth. The isnâd paradigm is a collection of reports attributed to Muhammad and other first-generation Muslims that claim to relay the opinions and practices of Muhammad and other members of the original Islamic community. The isnâd paradigm is based on a scholarly community, a hierarchy of transmitters who relay information from the Hadîth reports across generations. This paradigm for studying Islamic texts is considered necessary for credibly discussing Islamic matters, as it is

the means for realizing the ittisâlîyah, or the personal connectedness that validates the Hadîth reports as tradition.[585] Upon learning of the Associated Press release, many practicing Muslims felt obstructed from participating in this communal sharing of knowledge central to their religion in fear of entrapment in an NYPD scheme.

Imam Raza actively dissuaded congregants from discussing religious concepts or current events, limiting their range of speech. He felt his active repression of free discussion within the community, particularly among Muslim youth, undermined his duties as a religious leader and educator. He also started listening to Arabic-speaking instead of English-speaking Islamic scholars. Since fewer NYPD officers could understand Arabic, they were less likely to surveil such lectures. He started distancing himself from new congregants, fearful that they were actually informants, as well as from groups of young worshippers that were susceptible to eavesdropping. He encouraged congregants to stop socializing in between prayers. The absence of informal social interactions resulted in a distrustful, uncomfortable atmosphere for his congregants. He also was forced to mediate disputes between congregants about accusations of newcomers being NYPD informants.

All of these obstacles, Imam Raza claimed, detracted from his teaching and ministering. He considered leaving his position as an imam altogether for the safety of his family. Raza added that when the Associated Press reported on the NYPD Muslim surveillance program in 2011, the public revelation only worsened the situation for Masjid Al-Ansar. Weekday prayer attendance declined drastically from about twenty to two or three people.

The Muslim surveillance program affected not only religious worship, but also charity work, including helping the homeless, finding homes for families, donating money to families in

need, and fundraising for other charitable activities.[586] One such organization and plaintiff was Muslims Giving Back, founded in 2011 originally as Fesabeelillah Services of NYC, Inc. (FSNYC), along with one of its leaders, plaintiff Asad Dandia, who identified his charity work as a significant part of his religious practice and a step toward becoming a better Muslim. FSNYC hosted small events, invited speakers to a local mosque, and discussed the significance of charity in Islam. Most members were college-aged male students.

Asad Dandia first interacted with Shamiur Rahman, the NYPD informant, in October of 2012. Rahman had sent Dandia a Facebook friend request in March of that year, inquiring about getting involved with the FSNYC organization to become a better Muslim. Dandia had accepted Rahman's friend request because they had mutual friends on the social networking site. In addition to joining FSNYC, Rahman began attending Dandia's mosque in Brooklyn and meeting Dandia's network of friends, family, and colleagues. Rahman would ask people for their phone numbers within minutes of meeting them and would try to take photographs with or of them. Rahman offered the NYPD a photograph posted on Facebook of twenty-five young people at an FSNYC meeting.

Dandia, after hearing from a friend about the potential infiltration of FSNYC by an informant, stopped publicizing FSNYC events on social networking sites. Moreover, FSNYC members became less active due to fear of surveillance, and the organization offered fewer events with the exception of hosting a former rapper who converted to Islam, after which many members ceased attending FSNYC-sponsored events. Dandia created a new group called Muslims Giving Back that Rahman started to attend, as well. The group purchased food to

donate to needy families in the community, and it created a bulletin board inside of the mosque, Masjid Omar, with photographs of charity work in order to gain legitimacy for the program.

In September 2012, Rahman initiated several conversations about controversial current events, including the attack on the United States consulate in Benghazi and the Syrian revolution, prompting many members of Muslims Giving Back to suspect he was an informant. The following month, Rahman's admission that he was an informant stigmatized the charity organization, preventing Muslims Giving Back from reaching its prior level of community involvement. The mosque asked Dandia to remove the bulletin board and cease soliciting donations from community members after Friday prayers. Since then, Muslims Giving Back struggled to raise funds for food donations, recruit or communicate with new members, or maintain a sense of community.

The surveillance experience of Masjid At-Taqwa, another Brooklyn mosque plaintiff, resonated with that of the first mosque, Masjid Al-Ansar.[587] Aside from prayer services, the mosque offered classes on religious topics and religious or personal counseling. Imam Siraj Wahhaj led the Masjid At-Taqwa since its founding in 1981. The NYPD installed a surveillance camera pointed at the entrance of the mosque in 2004 or 2005 that made the congregants uncomfortable and anxious. At first, congregants started leaving immediately after prayers instead of socializing afterward, and eventually they started avoiding the mosque completely. As Islam encourages communal prayer, the plaintiff argued the video camera impeded the congregants' ability to participate in an important part of their religion.

Additionally, Imam Wahhaj claimed that he lost time allotted to his normal duties in order to ease the minds of immigrant congregants who feared they would be deported or blocked from

getting legal permanent residency. When the mosque leaders asked the NYPD to remove the camera, they responded by simply moving it across the street. With the remaining camera, the religious community became suspicious that the NYPD was placing informants or plainclothes officers inside the mosque, and leaders began to ask newcomers about their backgrounds with previous mosques and inform their current congregants of possible informants. As in Masjid Al-Ansar, leaders of Masjid At-Taqwa began recording their sermons and lectures. They also started including third-party witnesses in religious counseling conversations that ordinarily would have been private. The informant Shamiur Rahman tried to infiltrate Masjid At-Taqwa, but he left the community after being told that his questions about Osama bin Laden and the September 11 attacks would ban him from the mosque.

The 2011 Associated Press publications about the NYPD Muslim surveillance program mentioned one informant who inquired about a plane crash in Manhattan in October 2006. It also described how the NYPD collected reports from officers and informants about the reactions to the crash of various imams and congregants in Brooklyn, Queens, Corona, and Jersey City, including this mosque, Masjid At-Taqwa. After the Associated Press report was published, the mosque decreased the number of social activities and bonding activities that were traditionally central to its community.

Moustafa Bayoumi, an associate professor at Brooklyn College who published an account of Muslim American experiences during the War on Terror, was initially thought to be one of the targets of the NYPD. Bayoumi was described as “a lecturer at Brooklyn College” in the Associated Press report. However Mohammad Elshinawy, one of Bayoumi’s former students and collaborators on a book about Arab Muslim youth in Brooklyn, was actually the final plaintiff

against the NYPD. Elshinawy responded to Bayoumi's question of what it felt like to be surveilled: "'Apprehension . . . To what degree is this going to affect me? . . . There's no reason why we should consider ourselves second-class citizens. . . . I'm born in this country like anybody else.'"[588] The Terrorism Interdiction Unit (TIU) claimed that Mohammad was a threat "due to the fact that he is so highly regarded by so many young and impressionable individuals."[589] NYPD officers followed his daily movements around the city, including to the diamond district where he and his fiancé shopped for an engagement ring.

Mohammed Elshinawy was distinctive from the five previous plaintiffs in that he was not affiliated with a specific institution. He worked as a volunteer speaker and lecturer at various Islamic institutions in New York City.[590] Elshinawy first suspected he was surveilled in 2004 while studying at Brooklyn College. Attendees at his lectures and congregants at mosques warned him that the NYPD had questioned them about him. He was approached by people he suspected and later confirmed were NYPD officers or informants.

One such suspected informant was a man named Bilal, who often attended his lectures but fell asleep within minutes, claiming to record the lectures for information that he would not have been able to acquire otherwise. Bilal openly stated he wanted to "do something" for Islam since talking was not enough, and he tried to instigate conversations with Elshinawy. One confirmed undercover NYPD officer, who used the name Kamil Pasha, attended several community events with Elshinawy. In 2008 or 2009, another man informed Elshinawy that the NYPD had offered money in return for reports on Elshinawy's lectures, and the informant Shamiur Rahman was sent to a few of his lectures. NYPD officers in uniform approached Elshinawy, as well, asking to question him about a missing person.

As a result of all of this, Elshinawy altered content from his lectures that might be considered inflammatory or controversial to an NYPD agent. He suggested in the complaint that the surveillance program hindered his ability to communicate his religious beliefs to individuals or audiences, hold study circle in public spaces, or communicate with people he did not already know. Certain people stopped attending his lectures or associating with Elshinawy altogether, including longtime friends. He claimed his new reputation hindered his professional advancement as a formal leader within organizations he had worked closely within, including the Masjid Al-Ansar mosque that he helped to establish. The board members cited his long beard, youth, and characterization as a Salafi scholar to be problematic, given that the NYPD viewed those characteristics as indicators of terrorism. Even informal involvement became difficult for him, as he worried that the mosque would ask him to leave at any disagreement. His damaged reputation prevented his ability to advise Muslim youth, which he cited as part of his religious duty as a Muslim.

The defendants, comprised of the City of New York, Michael Bloomberg, Raymond Kelly, and David Cohen representing the NYPD, answered the plaintiffs' complaint by denying the majority of the one hundred and sixty-four numbered paragraphs throughout the entire complaint, with some partial exceptions to a few points that will be noted here.[591] Often in their answers, the defendants denied "knowledge or information sufficient to form a belief as to the truth of allegations set forth," but they repeatedly admitted that they indeed had conducted surveillance of the plaintiffs and their associations.[592] The defendants denied the plaintiffs' allegations that the *Radicalization in the West* report religiously profiled Muslim Americans, but they admitted the report was in fact published by the NYPD. They also claimed to have used

publicly available United States census data and government information to identify ethnic communities in New York. While data from the United States Census Bureau is in fact in the public domain, the NYPD still could have used that information to target plaintiffs based on their religion, in the same manner that public Facebook activity or Amazon Wish Lists can signify Islamic affiliation.

The defendants further admitted that Shamiur Rahman was in fact a confidential informant for the NYPD who sent pictures and attended events for the NYPD. Their answers continued on in this vein, admitting a few factual points but denying "any implication that the NYPD conduct[ed] unlawful surveillance of any institution or individual."[593] In other words, the fundamental dispute centered on whether the aforementioned surveillance tactics were or were not legal. The NYPD denied they knew the "thoughts or emotions" of Imam Raza and Masjid Al-Ansar congregants or of Dandia, and they did not know that Imam Raza was a religious leader at Masjid Al-Ansar.[594] The defendants denied possessing enough information to form a belief about plaintiffs' conversations or interactions,[595] or enough information to know what religious leaders at Masjid Omar did or said.[596] They also stood by their claim that the security camera placed outside the second mosque was nothing more than a "clearly-labeled general purpose security camera."[597] Conclusively, the defendants alleged that they acted lawfully within their jurisdiction.[598]

Hina Shamsi of the American Civil Liberties Union (ACLU), along with New York Civil Liberties Union and the CLEAR Project of CUNY Law School, represented the plaintiffs.[599] The court asked a few questions to clarify the plaintiffs' claim that the NYPD's surveillance policy was motivated by discriminatory targeting:[600] "[E]ven assuming the police department had an

unlawful program of suspicion with surveillance of Muslims, isn't that irrelevant if the City has reasonable suspicion to investigate these particular plaintiffs?"[601] In other words, the court asked the plaintiffs to clarify their distinction on when the city had the right to investigate plaintiffs, if it was Shamsi's position that the none of the facts could constitute reason to investigate the plaintiffs. Shamsi responded that the defendants went beyond permissible investigation by scrutinizing innocent congregants and religious speech while treating the mosques as terrorism enterprises. This response highlighted the main argument of the plaintiffs: that the NYPD hinged on preemptive surveillance and discrimination against Muslims and Islam.

The defense retorted that the case would have been over if they could prove there was a legitimate purpose for the activities of the NYPD concerning the six plaintiffs. Shamsi responded that a great deal of public information demonstrated the "suspicionless" nature of the surveillance program that used "religion as a proxy for criminal suspicion."[602] The court asked again for clarification, seeking confirmation that Shamsi believed all law enforcement regarding the plaintiffs was simply a "result of their religious affiliation," with which Shamsi agreed.[603] Shamsi compared the infiltration of the mosques based on suspicion of one criminal to investigating the entirety of St. Patrick's Cathedral based on one attendee, crossing institutional boundaries to the now established religion of Catholicism: "[T]hat doesn't mean that St. Patrick's Cathedral can be turned into a terrorism enterprise by which wholesale surveillance can be conducted of the religious speech that is there and of the congregants that are there."[604] Shamsi here attempted to invoke sympathy for the plaintiffs' argument of religious profiling by comparing the surveillance of a mosque to the surveillance of a Christian community.

The court adjourned for the day following this comment, after responding that there were multiple plaintiffs in the case, and not one single establishment such as the St. Patrick's Cathedral, seemingly missing the point of Shamsi's comparison: that Christian groups under surveillance might receive more respectful treatment than have Muslim communities. According to Shamsi, the NYPD informant Shamiur Rahman indicated that his NYPD handler had instructed him to conduct surveillance of the Muslim Student Association, "not because it was doing anything wrong but because the NYPD just wanted to make sure that it wasn't doing anything wrong and Rahman said that he never saw anyone he spied on do anything illegal, not even littering."[605] Rahman's admission supported the plaintiffs' argument, that the NYPD was engaging in preemptive surveillance.

In addition to debating the main argument, a second key theme was whether the NYPD surveillance program was legal. The plaintiffs and defense discussed how information was preserved within the NYPD, and what kinds of information should be physically and verbally handed over to the plaintiffs to make their case. This discussion resonated with the AFSC Quakers' FOIA requests for their FBI files, since the AFSC had to justify its request for information. The defense claimed that when they asked the plaintiffs what documents the plaintiffs were looking for, the plaintiffs could not specify, which made search incredibly burdensome to the defense since not all NYPD documents were stored electronically. The defense perhaps responded in this way to rebut future legal claims such as those made in *Raza.*

The plaintiffs retorted that they were not expecting the defense to search through fifty thousand documents.[606] The clerk pondered over what they could to do retrieve the information, and which databases they would search to see if the names of the plaintiffs surfaced.[607] This

debate not only demonstrated how much information the NYPD had amassed, which implied they collected some data without specific reasons, but it raised the question as to how future surveilled religious groups should navigate similar First Amendment claims. The defense responded that it would be difficult for the defendants and NYPD personnel to look at hundreds of names in documents authored by many different people, many of whom were no longer NYPD employees, and determine at what point in time they believed these people to be not be Muslim.[608] The defense also stated that investigations in post-September 11 New York would naturally have a "disparate impact upon the Muslim community."[609] In discussing which people would be relevant to examine amongst the NYPD personnel, Shamsi asserted on behalf of the plaintiffs that the people who conducted surveillance at the ground level were relevant in the case to determine whether there was a discriminatory intent in how the practice was carried out.[610]

As a compromise, the judge ordered the NYPD to send plaintiffs any surveillance reports relevant to their respective investigations.[611] At the time of this mandate, the NYPD held approximately two hundred and eighty thousand documents.[612] There were roughly twelve lieutenants supervising detectives during the time period or surveillance.[613] The judge agreed to grant the plaintiffs the detective-level information, as well as information from undercover officers, but not the confidential informants' information.[614]

The defense pointed out that *Raza* was the first case in which a judge ordered information from the NYPD, thereby insinuating that the plaintiffs' request was not reasonable. The defense argued the request was unprecedented "where the scope of information that is currently being made available has ever been done before," and they should consider whether that type of information from the intelligence bureau would be considered.[615] While the plaintiffs agreed that

the case was not ordinary, they disagreed that it was rare such information would be available for a case in which a confidential informant swore publicly that he was investigating people based on their religion.[616] "That is the crux of this lawsuit," Shamsi said.[617] That is, plaintiffs suggested they had been surveilled because of their religion, rather than because of evidence of wrongdoing. The distance of Islam from the prevailing Christian, albeit pluralistic, culture, contributed to the discrimination the *Raza* plaintiffs faced. Shamsi added it would be important to know not just the summary of the information, but also the directions given to informants and other employees of the NYPD surveillance program: "Because that shows how the practice is being carried out on the ground and whatever information gets fed up we're entitled, I think, to look at and query and test what information was being used to surveil our clients."[618]

The defense and plaintiffs additionally discussed when economic injuries manifested within the NYPD surveillance program.[619] Cheryl Shammas spoke for the defense that only Muslims Giving Back claimed it suffered economic injuries, and that the only financial loss Masjid Al-Ansar endured was the cost of a video camera, used to record sermons and avoid suspicious accusations.[620] The NYPD had requested financial information from Muslims Giving Back to probe into possible terrorist conduct.[621] The defense rationalized this request by claiming Masjid At-Taqwa had transferred funds to foreign terrorist organizations.[622]

Gorski, speaking for the plaintiffs, stressed that the dispute had to be decided based on what the NYPD actually knew at the time it conducted surveillance. Otherwise the NYPD would be justifying surveillance after the fact, and its surveillance strategy would have been preemptive.[623] The defense believed the plaintiffs were trying to make their case based on the irrelevant "veracity of facts that may be contained or are contained in the NYPD documents,"

rather than on whether the information the decision-makers possessed at the time of surveillance legitimated law enforcement.[624] Once again, this discussion of financial injuries dovetailed with a discussion of preemptive versus substantiated surveillance.[625]

Aside from debating whether the NYPD Muslim surveillance program was preemptive or based on factual evidence, or how information was stored and circulated, a third key theme to emerge from the *Raza* case was how to define a Muslim. These two points were related: defining Muslim was relevant to determining whether officers had engaged in preemptive surveillance. Much like the monitoring systems of the Utah Mormons and AFSC Quakers, government agencies could not avoid at least considering how they were defining and shaping religious expression by selecting, defining, and analyzing individuals or organizations they deemed subversive. The judge in *Raza* questioned how the plaintiffs and defendants would agree upon a definition for "Muslim" in the case. The judge suggested that they use the criteria, "believed to be Muslim or believed more likely than not to be Muslim."[626] The defense contested this characterization, questioning whether it was feasible that the NYPD officer at the time believed the person whose name was redacted to be more likely Muslim than not Muslim.[627] We see resonances with the Mormon and Quaker case studies, in terms of the surveilling agents discerning the core values of the religions. The plaintiffs were content with the definition, but requested that the judge add a third possibility, "believed not to be Muslim," in order to differentiate between Muslims and non-Muslims.[628] This third category would allow the plaintiffs to speak to how NYPD police officers omitted surveillance targets who were probably not Muslim. This category would refine their argument about religious profiling.

The plaintiffs presented a few additional requests, all of which were denied by the judge. First, they requested information concerning the holding of information about individuals and organizations not part of the investigation,[629] or in other words, that were not surveilled targets but were surveilled within a larger network of people. The judge did not see the relevance of other investigations. The plaintiffs responded they were relevant to determining whether their personal investigations were part of a broader policy of surveilling Muslims. Second, they requested documents and statistics indicated in the number of criminal charges that resulted from surveillance, given that the NYPD claimed often in the mass media that it was successful in thwarting terrorism. The judge also denied this request.[630]

The plaintiffs did succeed, however, in receiving policy documents related to the formation of the demographics unit that provided the NYPD with information about different communities in New York City that might be radicalized.[631] The policy documents explained the standards of the intelligence division for surveilling websites, blogs, and other online forums.[632] The plaintiffs then requested documents explaining the process by which the intelligence division decided a certain community, religious group, or mosque was of interest, but the judge ordered that they narrow their scope since any organized crime group could fall into that category.[633]

The main conclusion of the defense was that the plaintiffs failed to provide "any credible, indisputable evidence to substantiate their allegations" of "threat of harassment or reprisal by the NYPD," or proof that NYPD surveillance resulted in "any of their speculative harms."[634] The defense also claimed the plaintiffs blocked defendants from obtaining necessary documents

about the plaintiffs and "critical discovery," or evidence that would allow them to defend themselves against the "baseless claims and allegations set forth in the Complaint."[635]

The plaintiffs, in turn, maintained the defendants were trying to justify their investigations after the fact and probe for more names of potential terrorists without having reason to interrogate about said people.[636] The NYPD defense asked the Muslim plaintiffs to identify "hundreds" of worshippers, volunteers, donors, and other New York Muslims to the NYPD. The plaintiffs claimed they initially avoided pursuing the lawsuit to protect the additionally named Muslims from NYPD surveillance, and they conceded that they would provide the identities of people whose testimonies were relevant to the defendants' case. What remained uncertain was whether the defense had the right to probe further.[637] The plaintiffs maintained their stance, that turning over their files as evidence for the defense to strengthen its case would increase NYPD scrutiny of the plaintiffs, and therefore should have been rejected as speculative.[638] The plaintiffs claimed that defendants failed to show a "compelling need for any of their many, wide-ranging requests."[639]

The defense retorted that the plaintiffs' claim that the request by the NYPD for certain records would retroactively prove their surveillance was "illogical.[640] The defense explained that holdings documents about plaintiffs' arrest histories would help show if their arrest histories contributed to the financial harms they attributed to the NYPD surveillance program.[641]

In 2014, in response to the public pressure from the exposure of *Raza*, the NYPD disbanded its Demographics Unit, later renamed the Zone Assessment Unit, which created maps and collected information on Muslim communities in the New York City area. In January 2015, NYPD Commissioner William Bratton announced the new counterterrorism and

counterintelligence unit, the Strategic Response Group, that merged three hundred and fifty officers from anti-terrorist enforcement and crowd control of political protests. The SRG, which was criticized for monitoring protests, was not addressed in the *Raza* settlement of January 7, 2016.[642]

**C. The Settlement**

As part of the 2016 settlement, the NYPD agreed to reforms to protect Muslims in New York City from unreasonable surveillance. The NYPD had previously conducted its investigations without any independent oversight that regulated systemic misconduct in its surveillance operations. The New York City Council had held some jurisdiction over the police, but generally did not investigate intelligence operations.[643] Additionally, prior to the settlement, the Department of Investigation (DOI) was able to monitor the NYPD, but responded to executive orders investigating only corrupt or criminal activity. The Civilian Complaint Review Board (CCRB) and the Internal Affairs and the Commission to Combat Police Corruption (IAB) reviewed complaints against individual police officers, but these processes did not address systemic abuse within the NYPD.[644] Consequently, *Raza* was crucial to the story of government monitoring of religious groups in the United States. The settlement revised the rules for surveillance that were written in the COINTELPRO environment of the 1970s from the previous chapter, when government secrecy clashed with civil liberties, and that were later modified after the attacks on September 11.

The *Raza* settlement offered the most comprehensive revision of NYPD surveillance since the Handschu Guidelines were introduced. When NYPD officers were first revealed by the Associated Press as working undercover in mosques, the Police Commissioner responded that all

undercover officers and informants simply responded to leads as permitted by the modified *Handschu* Guidelines. But the nature of the alleged leads remained unclear based on the lack of evidence supporting the Commissioner's claims. It was also unclear whether the NYPD complied with other parts of the Guidelines, including the rule that it could not keep information it collected on investigations unrelated to terrorism or criminal activity.[645]

The most prominent aspect of the 2016 reforms to the Guidelines, as part of the *Raza* settlement, was the creation of a civilian representative position within the police department to review proposals of open, close, or extend investigations of political or religious activities. The civilian representative position, appointed by the mayor, was created to serve a five-year term on the Handschu Committee, along with various NYPD officials. The representative will provide input before any investigation is opened or extended, and will record and report violations of the Handschu Guidelines to the Police Commissioner. The Commissioner, in turn, will investigate the violations and report back to the representative. What was particularly striking about this settlement was the emphasis on transparency of information, as the representative will accordingly have access to all of the information that the NYPD uses to pursue religious or political investigations. The representative should be able to prevent the NYPD from claiming that it lost information relevant to future investigations, as it had done in *Raza*. The civilian representative will report methodical violations to the judge from the *Handschu* case. The settlement also expanded the authority committee reviewing NYPD investigations to eleven people, from the original three-person committee of the 1985 Handschu Guidelines.

Additionally, as part of the settlement, the defendants were prohibited from conducting investigations based on race, politics, religion or ethnicity as the motivating factor. Officers were

ordered to cite factual information about unlawful activity before investigating political or religious activity, as well as about the possible repercussions of such investigations. The implication of this settlement was not that any surveillance is unconstitutional, but that barriers were necessary in order to cite some evidence of criminal action prior to opening an investigation. The settlement limited the use of undercover or confidential informants to situations where police officers cannot acquire the necessary information in an effective, non-intrusive way. This stipulation, however, left an ambiguous space within which undercover officers or informants can continue to infiltrate mosques or other legally assembled groups of Muslims. In other words, even if the revised Guidelines discourage preemptive surveillance, NYPD officers can surveil Islamic culture rather than a specific belief deemed criminal or indicative of an imminent terrorist attack.

The 2016 changes to the Guidelines also stopped open-ended investigations by introducing time limits and periodic reviews of ongoing investigations. Finally, the NYPD was ordered to remove the *Radicalization in the West* report from its website and formally renounce its continued use in NYPD investigations.[646] Beyond just assisting New Yorkers, Hina Shamsi, Director of the ACLU National Security Project, proclaimed: "It's also a win for the rest of the country as it marks the first time that any meaningful safeguards have been imposed to prevent discriminatory surveillance of American Muslim communities. At a time of rampant anti-Muslim hysteria and discrimination nationwide, this settlement sends a forceful message throughout the country, demonstrating that law enforcement can and must do its job without resorting to discriminatory practices."[647] As much as the settlement can be marked as a success for the plaintiffs and their lawyers, the accountability of the mayor-appointed civilian representative to

New Yorkers remains unclear. The provisions of the settlement may not result in any pragmatic differences in NYPD surveillance practices.

**V. Pluralism**

The settlement of *Raza*, though profound and far-reaching in its implications, may not be the final word on the surveillance of Muslim Americans in the immediate future. *Hassan v. City of New York*, a lawsuit in pre-trial litigation that was filed against the NYPD for the surveillance of Muslims in New Jersey revealed by the same Associated Press release, is to date an active federal case, but it made progress in October 2015 when the United States Court of Appeals for the Third Circuit reversed and remanded the February 2014 dismissal of the case by the United States District Court. Ruthann Robson, a law professor at the CUNY School of Law, summarized the key points of the opinion of the Third Circuit. While neither the Third Circuit nor the Supreme Court had ever considered whether classifications based on religion should lead to heightened scrutiny under the Equal Protection Clause, "it has long been implicit in the Supreme Court's decisions that religious classifications are treated like others traditionally subject to heightened scrutiny, such as those based on race."[648] Heightened scrutiny of these classifications, in other words, meant that race and religion received extra attention in Supreme Court decisions. The Third Circuit acknowledged national security interests played a unique role in these cases, but added "it is often where the asserted interests appears most compelling that we must be most vigilant in protected constitutional rights," thereafter citing two Supreme Court cases regarding Japanese American curfews and internment during the Second World War.

Concluding with the statement, "We are left to wonder why we cannot see with foresight what we see so clearly with hindsight—that "[l]oyalty is a matter of the heart and mind[,] not

race, creed, or color,"[649] the Third Circuit opinion for the New Jersey-based Muslim case demonstrated a gradual departure from the case of the Utah Territory Mormons, where the Supreme Court justices focused on protecting religion when not threatening the greater moral good, to this contemporary unsettled case of New Jersey Muslims, rhetorically linked here to racial minorities. Governmental monitoring of religions in order to tolerate religious expression while maintaining the interests of the greater society surfaced in all three case studies.

The Utah Mormons, AFSC Quakers, and Brooklyn Muslims resented discriminatory policies that shaped the monitoring systems that observed them. Mormons reacted by fleeing to the Underground, while the AFSC Quakers were baffled that the FBI surveilled them, given their direct communication with government officials. Research on surveillance of Muslim Americans has found that targeting Muslim Americans without explanation or respect undermines the willingness of community members to cooperate with counterterrorism operations.[650] In the case of *Raza*, the discriminatory policies of the NYPD undermined its uninhibited freedom to conduct surveillance in utter secrecy.

As shown throughout the case studies, most explicitly in the Mormon case, the religion clauses of the First Amendment prevent the United States government from interfering with religion, as well as from promoting or favoring a specific faith, but they do not protect religious beliefs in all circumstances. Legal scholar Kent Greenawalt has suggested that in certain contexts, tensions arise between the two clauses. For example, by offering exemptions to those of certain religious beliefs, the government may be establishing a religion by favoring it.[651]

The NYPD surveilled contemporary Muslim Americans through a new, predictive model unlike those used by the federal marshals or FBI agents of the previous two case studies. Yet the

*Raza* plaintiffs live in a comparatively pluralistic United States. Mormons, though considered outsiders, began their path to cultural acceptance in America when the Church of Latter-day Saints formally relinquished polygamy. The Mormons were classical outsiders, but they adhered to a religion that was born and bred within the United States. The AFSC Quakers' unrelenting commitment to social justice weakened national opposition to communism. Yet Quakers were already placed firmly within a Protestant, insider umbrella when the American Friends Service Committee was under surveillance in the twentieth century, and they were analyzed with far greater carefulness and thoroughness by the FBI.

Muslims, in turn, have lived on the margins of American civic life since well before the September 11 attacks. The place of Islam in the United States has a long, complicated history, dating back to the sixteenth century. Zareena Grewal has argued that Americans have appropriated the timeless discourse of the "Muslim World" from "Colonial Europe's moral geography of the Orient," and this narrative corroborates the gap between legal and social citizenship.[652] Surveillance policies in the United States, according to Grewal, are devoid of race in language but identify people racially.[653] Abdullah Ahmed An-Na'im has added that citizenship is not monolithic, as it surfaces in many spaces, "in voluntary associations, community organizations, trade unions, newspapers and media, and educational and religious institutions."[654] The explanation of citizenship as not just legal and political, but also cultural, helps to explain why certain minority groups exist but are not perceived by the public as wholly integrated in United States culture.

As a religious minority in the United States, but a religious majority of the world, Muslim Americans have faced their own distinctive path in the United States in comparison to Muslims

of other nations. Legal scholar Khaled A. Beydoun argued that American Islamophobia is distinctive from British or French Islamophobia.[655] Within the United States, the racial, national, and socioeconomic diversity of Muslim Americans reflects the diversity of experiences among them. Yet often these individuals are grouped together by broad categories to facilitate the surveillance programs of municipal, state, and federal agencies. The NYPD did map out individuals of particular nationalities, but it also relied on its four-phase model to assess all potential Islamic terrorists under one lens.

State action against Muslims, including the passage of the U.S. Patriot Act and the establishment of the Department of Homeland Security, facilitated private animus against Muslim Americans.[656] Beydoun has argued that state-endorsed Islamophobia is perpetuated by both private and public actors, including citizens, state agencies, corporations, and police departments: "Anti-Muslim animus is deeply rooted in American halls of power and popular consciousness."[657] The ramifications of this post-September 11 Muslim surveillance campaign peaked with *Raza v. City of New York*, and they have touched upon all facets of daily lives, particularly those of less wealthy Muslim Americans. The current model for antiterrorism and national security policing in much of the nation, Countering Violent Extremism (CVE), links radicalization to Islamic piety and surveils targets' associations and political speech, including critiques of American foreign or domestic policies in physical and virtual spaces.[658] Officers attempt to build trust through CVE in Muslim American communities that are plagued with poverty and racism, where people more heavily mistrust police and government officers.[659]

Beydoun's research on the intersectionality of race and socioeconomic status of Muslim American communities is important for understanding this chapter's focus on one specific,

localized case of the surveillance of Muslim Americans in Brooklyn, New York. The Muslim Brooklynites of *Raza* are in this way distinctive from the Mormons and Quakers of the first two cases, when government agencies monitored individuals throughout a wider range of space. Beydoun emphasized that Islamophobia is not static but a "dynamic system whereby lay actors and law enforcement target Muslim Americans based on irrational fear and hatred" that is both societal and state-sponsored.[660] Local and federal police tend to concentrate surveillance resources on low-income communities, where the perils of Islamophobia are amplified.[661]

Counterterrorism efforts increased throughout the country in the decade following the attacks on the World Trade Center, and it should be noted that the revelation of the NYPD Muslim surveillance program marked just one of many counterterrorism programs throughout the nation. However, the NYPD counterterrorism and intelligence operations were larger and more comprehensive than those of other municipal police departments. In 2010, the NYPD possessed a budget of over one hundred million dollars for counterterrorism and intelligence alone, as well as one thousand officers distributed between the counterterrorism and intelligence units.

In this way, the protagonists of *Raza* and marginalized Mormons were distinctive from the insider AFSC Quakers, who took it upon themselves to defend other groups once COINTELPRO was revealed. Less affluent Muslim Americans, often concentrated in large cities like Detroit, New York City, Minneapolis, and Philadelphia, often lack the resources to defend themselves, and they are reluctant to report hate crimes in fear of retribution and future surveillance by police departments that they already do not trust.[662] These socioeconomic factors amplified the detrimental effect of the NYPD Muslim surveillance program that, once exposed,

revealed the flawed effort of NYPD officers to implement an accurate understanding of Islam in the surveillance program. Growing beards and visiting mosques more closely resembled how the majority of American citizens engaged with their respective religions than how terrorists prepared for acts of Islamic extremism.

## VI. Conclusion

The *Raza* settlement will not protect all future religious expression, particularly in counterterrorism operations. Surveillance will continue, but under the tightened and refined Guidelines. The settlement introduced greater constraint over how the NYPD conducts surveillance of political, religious, and racial minorities. The judge from *Handschu* listened to New York City citizens discuss whether they found the settlement terms satisfactory during a public fairness hearing on April 19, 2016.[663] The plaintiffs from *Raza* expressed their overall satisfaction with the settlement with some additional comments, such as those of Asad Dandia from Muslims Giving Back. Dandia reiterated that his organization was stigmatized after the Associated Press reveal. Perceived stigmatization by the hands of mass media distinguished this case study from the Quaker case study, in which the media revelation of FBI surveillance empowered the AFSC. Barbara Handschu, the primary attorney from *Handschu* after whom the Guidelines were named, stated she was unhappy that the settlement did not go further, but she reluctantly accepted them as a vast improvement from the amended Guidelines of 2003.

Several Muslim American citizens of New York City voiced some concerns to the *Raza* judge. A representative from the Arab American Center of New York in southwest Brooklyn, another program targeted by the NYPD, claimed that students affiliated with its center chose not to engage in political activities as a result of NYPD surveillance. One new contribution of the

fairness hearing not explored in *Raza* was, consequently, how chilling religious expression can subsequently chill political activities. A second contribution came from a representative of the New York Civil Liberties Union (NYCLU), who suggested that the proposed Guidelines should apply to NYPD databases, including cameras and towers used to collect information. The NYCLU representative elaborated that access to such information will sustain investigations without evidence of terrorism, effectively violating the revised Guidelines from the *Raza* settlement. He rightfully pointed to the ongoing question of how information is collected, stored, and used by surveilling agents as media evolve rapidly, and whether the existing laws or frameworks, such as the revised Guidelines, appropriately account for all forms of information collection and not just that which relies on the physical presence of a government agent.

External review of surveillance imposed by the 2016 settlement offered accountability that was unavailable to the nineteenth-century Mormons or to twentieth-century AFSC Quakers. Both groups would have benefited from external monitoring of the government agencies themselves, in the case of the Mormons, due to the questionable approaches used by federal officials in the territories, and in the case of the Quakers, due to disagreement among FBI agents throughout the country about the necessity of the AFSC surveillance program. The surveilling agents of all three cases demonstrated varied attempts to understand the religions they were surveilling.

Part of the invasiveness described by the Muslim plaintiffs in *Raza* can be attributed to the expansive surveillance capabilities of contemporary techniques. But many contemporary surveillance programs still rely on age-old forms of monitoring, such as eavesdropping. The nuanced aspect of this case study was not that media are now more advanced, but that parts of

the NYPD surveillance system, such as the NYPD report and the provocative questions posed by the informant to various Muslim Americans, attempted to predict or instigate action. Trying to predict action, rather than monitoring action itself, presents a far more ambitious project for government agencies. In trying to predict terrorist actions, the NYPD gravitated toward comprehensively surveilling Muslims and Islam rather than surveilling a specific activity, such as polygamy, or basing investigations on evidence of specific criminality, such as the alleged communist activities of AFSC members.

Government agencies in all three case studies surveilled religions under suspicion of polygamy, a form of religious expression, as well as communism and terrorism, perceived by the agencies as connected to a religious expression. The *Raza* settlement showed the continuing importance of constraints on government surveillance. Such constraints allow government agencies to examine potential criminal activity while still protecting the religion itself. The government agencies of all three case studies showed varying concern about the theologies of each religion, understanding the need to distinguish between religion and religious expression. The Supreme Court protected Mormonism, but not polygamy. FBI agents highly respected Quakers, but not communism. The NYPD, though perhaps the most ill-informed of the three government agencies about the religion they were surveilling, focused on curtailing Islamic-inspired terrorism by surveilling Islamic religion institutions instead of criminal activities. In each of the case studies, government agents' varying efforts to understand the religions of the communities they were monitoring did not neutralize the resulting limitations to religious expression within those communities. Yet these case studies do suggest that government agents

have been more introspective in monitoring religious institutions while balancing state interests than critics of contemporary government surveillance practices might assume.

---

[520] Jesse Byrnes, "Trump: You're Going to Have to Watch and Study the Mosques," *The Hill*, November 16, 2015, http://thehill.com/policy/national-security/260241-trump-youre-going-to-have-to-watch-and-study-the-mosques.

[521] Deepa Kumar, *Islamophobia and the Politics of Empire* (Chicago: Haymarket Books, 2012), 144.

[522] The plaintiffs were represented by the American Civil Liberties Civil Union (ACLU), New York Civil Liberties Union, Creating Law Enforcement Accountability & Responsibility (CLEAR) project, and Morrison & Foerster LLP.

[523] David A. Hollinger has argued that Protestant communities no longer experience cultural hegemony as they did prior to 1960, according to historian David A. Hollinger, but Protestantism continues to influence the values of American culture. He argues the values that have come to be associated with secularism since the Second World War, including religious freedom, are legacies of ecumenical Protestantism, or Protestant liberalism, without which millions of Americans would not have experienced a diverse modernity. Hollinger claims that while Protestant liberalism did not singlehandedly change American culture, many Americans who were children of ecumenists moved into post-Protestant secular society, drawing from the liberal values of ecumenical Protestantism. This dissertation takes a more neutral stance on the characterization of contemporary United States society, as one that is "pluralistic" but not necessarily "post-Protestant." See David A. Hollinger, *After Cloven Tongues of Fire: Protestant Liberalism in Modern American History* (Princeton: Princeton University Press, 2015).

[524] Raymond W. Kelly, preface to *Radicalization in the West: The Homegrown Threat*, by Mitchell D. Silber and Arvin Bhatt (New York: New York Police Department, 2007), 2.

[525] Complaint at 5, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[526] Aziz Huq, memorandum, 30 August 2007, "Concerns with Mitchell D. Silber & Arvin Bhatt, N.Y. Police Dep't, *Radicalization in the West: The Homegrown Threat* (August 2007)" (New York: Brennan Center for Justice at NYU Law, 2007), accessed March 14, 2016, https://www.brennancenter.org/sites/default/files/legacy/Justice/Aziz%20Memo%20NYPD.pdf

[527] Mitchell D. Silber and Arvin Bhatt, *Radicalization in the West: The Homegrown Threat* (New York: New York Police Department, 2007), 5.

[528] Mitchell D. Silber and Arvin Bhatt, *Radicalization in the West: The Homegrown Threat* (New York: New York Police Department, 2007), 17.

[529] Silber and Bhatt, *Radicalization in the West*, 6.

[530] Faiza Patel, *Rethinking Radicalization* (New York: Brennan Center for Justice at NYU Law, 2011), 15-16.

[531] Silber and Bhatt, *Radicalization in the West*, 6.

[532] Silber and Bhatt, *Radicalization in the West*, 6.

[533] Silber and Bhatt, *Radicalization in the West*, 9.

[534] Silber and Bhatt, *Radicalization in the West*, 8-9.

[535] Silber and Bhatt, *Radicalization in the West*, 7.

[536] Silber and Bhatt, *Radicalization in the West*, 7.

[537] Juynboll, G. H. A., *Encyclopedia of the Canonical Hadith* (Boston: Brill Academic Publishers, 2007), 339.

[538] Ingrid Pfluger-Schindlbeck, "On the Symbolism of Hair in Islamic Societies: An Analysis of Approaches," *Anthropology of the Middle East* 2, no. 1 (2006): 72.

[539] Patel, *Rethinking Radicalization*, 16.

[540] Elizabeth Goitein, "The First Amendment and Domestic Intelligence Gathering," in *Domestic Intelligence: Our Rights and Safety* (New York: Brennan Center for Justice at the New York University School of Law, 2013), 60, accessed March 23, 2016, http://www.brennancenter.org/publication/domestic-intelligence-our-rights-and-our-safety.

[541] Faiza Patel, *Rethinking Radicalization*, 2.

[542] William A. Graham, "Traditionalism in Islam: An Essay in Interpretation," *The Journal of Interdisciplinary History* 23, no. 3 (1993): 495, http://www.jstor.org/stable/206100.

[543] Hon. John O. Brennan, Bennie Thompson, Philip Mudd, Sheriff Leroy Baca, Nura Maznavi, and Geoffrey Stone, "Counterterrorism's New Frontier: Intelligence Collection and Law Enforcement," in *Democracy & Justice: Collected Writings* (New York: Brennan Center for Justice at New York University School of Law, 2012), 76-77.

[544] Aaron Baker, "Controlling Racial and Religious Profiling: Article 14 ECHR Protection v. U.S. Equal Protection Clause Prosecution," *Texas Wesleyan Law Review* 13, no. 2 (2007): 286.

[545] Complaint at 3-4, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[546] Complaint at 4, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[547] Ihsan Bagby, "Mosques in the United States," in *The Oxford Handbook of American Islam*, ed. Jane I. Smith and Yvonne Yazbeck Haddad (New York: Oxford University Press, 2014), 225.

[548] Complaint at 30-32, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[549] Complaint at 4-5, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[550] Complaint at 4, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[551] William O. Walker III, *National Security and Core Values in American History* (New York: Cambridge University Press, 2009), 268.

[552] Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Places* (New York: Cambridge University Press, 2009), 318-319.

[553] Andrea McArdle, "Policing After September 11: Federal–Local Collaboration and the Implications for Police–Community Relations," in *Uniform Behavior: Police Localism and National Politics*, ed. Stacy K. McGoldrick and Andrea McArdle (New York: Palgrave Macmillan, 2006), 188.

[554] Public Meeting about the *Raza* Settlement (meeting, A. J. Muste Memorial Institute, New York, NY, March 31, 2016).

[555] Marilynn S. Johnson, "Challenging Police Repression: Federal Activism and Local Reform in New York City," in *Uniform Behavior: Police Localism and National Politics*, ed. Stacy K. McGoldrick and Andrea McArdle (New York: Palgrave Macmillan, 2006), 91.

[556] McArdle, "Policing After September 11," 190.

[557] Johnson, "Challenging Police Repression," 91.

[558] Zick, *Speech Out of Doors*, 319.

[559] "Raza v. City of New York – Legal Challenge to NYPD Muslim Surveillance Program," ACLU, last modified January 7, 2016, accessed March 23, 2016, https://www.aclu.org/cases/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-program.

[560] Bayoumi, *This Muslim American Life*, 7.

[561] "Factsheet: The NYPD Muslim Surveillance Program," ACLU, accessed April 29, 2015, https://www.aclu.org/factsheet-nypd-muslim-surveillance-program.

[562] Testimony of Thomas Galati at 124, Handschu v. Special Services Division at 124 (S.D.N.Y. 2012) (71CIV.2203), http://www.ap.org/Images/Pages-from-Galati-EBT-6-28-12_tcm28-8694.pdf.

[563] Matt Apuzzo and Adam Goldman, "With CIA Help, NYPD Moves Covertly in Muslim Areas," *Associated Press*, August 23, 2011, http://www.ap.org/Content/AP-In-The-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas.

[564] Steven R. Fink, "Preaching as Reimagining: Post-9/11 Khutbahs in the United States and Canada," *Comparative Islamic Studies* 3, no. 2 (2007): 195, doi:10.1558/cis.v3i2.195.

[565] Moustafa Bayoumi, *This Muslim American Life: Dispatches from the War on Terror* (New York: New York University Press, 2015), 5.

[566] Ancestries of interest include the following: Afghanistan, Albania, Bahrain, Bangladesh, Chechnya, Egypt, Guyana, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Pakistan, Palestine, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, the United Arab Emirates, Uzbekistan, Yemen, and Yugoslavia.

[567] Complaint at 6, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[568] Complaint at 5, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[569] Complaint at 9, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[570] Adam Goldman and Matt Apuzzo, "Informant: NYPD Paid Me to 'Bait' Muslims," *Associated Press*, October 23, 2012, http://www.ap.org/Content/AP-In-The-News/2012/Informant-NYPD-paid-me-to-bait-Muslims.

[571] Goldman and Apuzzo, "Informant: NYPD Paid Me to 'Bait' Muslims."

[572] Complaint at 9, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[573] Complaint at 1, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[574] Complaint at 1, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[575] "Raza v. City of New York – Legal Challenge to NYPD Muslim Surveillance Program," ACLU.

[576] Complaint at 2, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[577] Complaint at 2, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[578] Complaint at 2, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[579] Complaint at 2-3, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[580] *Contemporary Legal Issues: Encyclopedia of Religion and the Law in America*, s.v. "Religious Belief, Definition of" (Amenia, NY: Grey House Publishing, 2009), http://ezproxy.cul.columbia.edu/login?qurl=http%3A%2F%2Fliterati.credoreference.com%2Fcontent%2Fentry%2Fgreyrala%2Freligious_belief_definition_of%2F0.

[581] Complaint at 10-16, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[582] Complaint at 11, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[583] Complaint at 13, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[584] Fink, "Preaching as Reimagining: Post-9/11 Khutbahs in the United States and Canada," 195.

[585] Graham, "Traditionalism in Islam: An Essay in Interpretation," 501-502.

[586] Complaint at 16-21, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[587] Complaint at 21-25, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[588] Bayoumi, *This Muslim American Life: Dispatches from the War on Terror*, 3.

[589] Bayoumi, *This Muslim American Life: Dispatches from the War on Terror*, 3.

[590] Complaint at 25-29, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[591] Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen at 1-19, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[592] Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen at 2, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[593] Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen at 6, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[594] Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen at 8-9, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[595] Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen at 9, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[596] Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen at 12, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[597] Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen at 13, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[598] Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen at 18-19, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[599] Transcript of Civil Cause for Initial Conference Before the Honorable Joan M. Azrack, United States Magistrate Judge at 1-13, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[600] Transcript of Civil Cause for Initial Conference Before the Honorable Joan M. Azrack, United States Magistrate Judge at 8, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[601] Transcript of Civil Cause for Initial Conference Before the Honorable Joan M. Azrack, United States Magistrate Judge at 9, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[602] Transcript of Civil Cause for Initial Conference Before the Honorable Joan M. Azrack, United States Magistrate Judge at 12, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[603] Transcript of Civil Cause for Initial Conference Before the Honorable Joan M. Azrack, United States Magistrate Judge at 12, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[604] Transcript of Civil Cause for Initial Conference Before the Honorable Joan M. Azrack, United States Magistrate Judge at 13, Raza v. City of New York (E.D.N.Y. 2013) (No. 13-cv-03448).

[605] Transcript of Civil Cause for Discovery Conference Before Robert Terranova, Law Clerk for Honorable Joan M. Azrack at 52, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[606] Transcript of Civil Cause for Discovery Conference Before Robert Terranova, Law Clerk for Honorable Joan M. Azrack at 77-78, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[607] Transcript of Civil Cause for Discovery Conference Before Robert Terranova, Law Clerk for Honorable Joan M. Azrack at 84, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[608] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 18, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[609] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 21, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[610] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 25, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[611] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 27, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[612] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 31, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[613] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 36, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[614] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 38, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[615] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 45, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[616] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 46, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[617] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 47, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[618] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 50, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[619] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 3, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[620] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 4, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[621]Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 9, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[622] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 4-7, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[623] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 8-9, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[624] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 9-10, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[625] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 10-11, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[626] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 14, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[627] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 16, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[628] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 17, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[629] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 78, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[630] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 81, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[631] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 98, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[632] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 122, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[633] Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge at 108-109, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[634] Defendants' Memorandum of Law in Opposition to Plaintiffs' Objections to Defendants' Interrogatories Purportedly on Grounds of *First Amendment* Associational Privilege and So-Called "Retroactive Justification" at 10, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[635]Defendants' Memorandum of Law in Opposition to Plaintiffs' Objections to Defendants' Interrogatories Purportedly on Grounds of *First Amendment* Associational Privilege and So-Called "Retroactive Justification" at 1, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[636] Plaintiffs' Reply Brief Concerning Interrogatories Challenged on Grounds of First Amendment Privilege and Retroactive Justification at 8, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[637] Plaintiffs' Reply Brief Concerning Interrogatories Challenged on Grounds of First Amendment Privilege and Retroactive Justification at 1, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[638] Defendants' Memorandum of Law in Opposition to Plaintiffs' Objections to Defendants' Interrogatories Purportedly on Grounds of *First Amendment* Associational Privilege and So-Called "Retroactive Justification" at 10, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[639] Plaintiffs' Reply Brief Concerning Interrogatories Challenged on Grounds of First Amendment Privilege and Retroactive Justification at 5, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[640] Defendants' Memorandum of Law in Opposition to Plaintiffs' Objections to Defendants' Interrogatories Purportedly on Grounds of *First Amendment* Associational Privilege and So-Called "Retroactive Justification" at 16, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[641] Defendants' Memorandum of Law in Opposition to Plaintiffs' Objections to Defendants' Interrogatories Purportedly on Grounds of *First Amendment* Associational Privilege and So-Called "Retroactive Justification" at 17, Raza v. City of New York (E.D.N.Y. 2014) (No. 13-cv-03448).

[642] Kris Hermes, "Court Offers Rare Opportunity for Public Comment on NYPD Spying," *Huffington Post*, March 22, 2016, http://www.huffingtonpost.com/kris-hermes/rare-opportunity-emerges-_b_9481344.html.

[643] Faiza Patel and Andrew Sullivan, *A Proposal for an NYPD Inspector General* (New York: Brennan Center for Justice at New York University School of Law, 2012), 1-4.

[644] Patel and Sullivan, *A Proposal for an NYPD Inspector General*, 11-12.

[645] Patel and Sullivan, *A Proposal for an NYPD Inspector General*, 16.

[646] ACLU, "Landmark Settlement Protects American Muslims From Discriminatory NYPD Surveillance," news release, January 7, 2016, https://www.aclu.org/news/landmark-settlement-protects-american-muslims-discriminatory-nypd-surveillance.

[647] Hina Shamsi, "Landmark Settlement in Challenge to NYPD Surveillance of New York Muslims: What You Need to Know," ACLU, January 7, 2016, accessed March 23, 2016, https://www.aclu.org/blog/speak-freely/landmark-settlement-challenge-nypd-surveillance-new-york-muslims-what-you-need.

[648] Ruthann Robson, "Third Circuit Reinstates Constitutional Claim Against NYC for Muslim Surveillance," *Constitutional Law Professors Blog* (blog), October 13, 2015, http://lawprofessors.typepad.com/conlaw/2015/10/third-circuit-reinstates-claims-by-nj-muslims-for-nyc-surveillance.html.

[649] Robson, "Third Circuit Reinstates Constitutional Claim Against NYC for Muslim Surveillance."

[650] Tom R. Tyler, Stephen J. Schulhofer, and Aziz Z. Huq, "Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans," *Law and Society Review* 44, no. 2 (2010): 365, http://www.jstor.org/stable/40783659.

[651] Kent Greenawalt, *Interpreting the Constitution* (New York: Oxford University Press, 2015), 242.

[652] Zareena Grewal, *Islam is a Foreign Country: American Muslims and the Global Crisis of Authority* (New York: New York University Press, 2014), 4-5.

[653] Grewal, *Islam is a Foreign Country* , 8.

[654] Abdullahi Ahmed An-Na'im, *What is an American Muslim? Embracing Faith and Citizenship* (New York: Oxford University Press, 2014), 12.

[655] Khaled A. Beydoun, "Between Indigence, Islamophobia, and Erasure: Poor and Muslim in 'War on Terror' America," *California Law Review* (forthcoming 2016): 22-23, http://ssrn.com/abstract=2685840.

[656] Beydoun, "Between Indigence, Islamophobia and Erasure," 23.

[657] Beydoun, "Between Indigence, Islamophobia and Erasure," 18.

[658] Beydoun, "Between Indigence, Islamophobia and Erasure," 28-29.

[659] Beydoun, "Between Indigence, Islamophobia and Erasure," 35.

[660] Beydoun, "Between Indigence, Islamophobia and Erasure," 19.

[661] Beydoun, "Between Indigence, Islamophobia and Erasure," 9.

[662] Beydoun, "Between Indigence, Islamophobia and Erasure," 10, 19.

[663] Fairness Hearing on the *Raza* Settlement, held before Hon. Charles S. Haight, United States District Court, Southern District of New York, Moynihan Federal Courthouse, New York, New York, April 19, 2016.

# Chapter 5. Conclusion: Religion, Media, and Surveillance

## I. Overview of the Main Contributions

The decisions of government agencies while monitoring the Mormons of the Utah Territory, Quakers of the American Friends Service Committee, and Muslims of Brooklyn, New York, shaped the religious expression of these groups. Cultural norms, along with three distinctive ideological threats, formed the government monitoring systems in each of the case studies. The Mormons abandoned polygamy. The AFSC Quakers changed their institutional identity by withdrawing from their cordial, transparent correspondence with federal government officials about their social justice-related activities. Alternatively, they fought legal and political battles against government spying of other organizations and of themselves. The *Raza* plaintiffs limited their religious expression to the mosques, and avoided broader discussions about Islam or politics in formal or extracurricular gatherings. The NYPD surveillance system weakened the doctrinal practices not just of Brooklyn Muslims, but of the many Muslims throughout the nation who feared government spying. This final chapter highlights three main contributions of this research. It then revisits the central themes of the case studies, concluding with suggestions for future analyses of surveillance, religion, and media in the United States.

This dissertation has contributed to the growing research on religion and media. Existing work tends to examine the relationship between religion and media within and beyond religious denominations. Such foci include online churches, televangelism, religious radio, religious blogs, faith-based video games, and spiritual rock music. These examinations are two-fold: organized religion is expressed through various media, including radio, Internet, and television, or characteristics of religion, such as ritual, belief, and community, are expressed through media

produced outside of organized religions, such as the *The Oprah Winfrey Show*.[664] Alternatively, as argued by renowned communications scholars James Carey and Stewart Hoover, we cannot think of religion and media as distinct phenomena, and they are better studied at their intersection.[665] Carey boldly stated, "Religion is perhaps the most neglected topic in communications."[666] He explained that while religion has always been present within media studies, it has largely been neglected because of the increasing centrality in universities of the Enlightenment, science, and empiricism, and the widespread dismissal of religion as a temporary phase of human history.

According to Carey's explanation, religion was displaced in at least three ways in media studies: by the secularizing force of media; by the separation of religious topics in mass media publications, such as in the religion page of the newspaper; and by the idea that media, which provided individuals with ritual, narrative, and meaning, replaced religion in the realm of the sacred.[667] Religion, as he notes, has nonetheless persisted in contemporary societies. Scholars of religion and media therefore disagree that media displaced religion in these three ways. This dissertation adds that religion and media research might consider an understanding of religion that falls in between denominational and non-denominational characterizations. The surveilled communities were affiliated with a specific denomination, but government agencies contemplated how those affiliations shaped their public activities, outside of denominational boundaries. The surveillance of religious communities in the United States has considered how government agents assessed the impact of religious beliefs on the actions of the surveilled communities.

Second, this dissertation provides a window into how certain religious groups communicate in the face of adversity. The phrase, strategic communication, refers to how organizations utilize communicative efforts to carry out an agenda, but it can be employed in diverse contexts. Communications scholar Monroe Price has used the phrase, "the new strategic communication," to describe how individuals or organizations utilize pervasive technologies to surveil targets, affect opinion, and spread influence, noting that contemporary pervasive surveillance is not a new phenomenon.[668] Price points out that the behaviors of religious groups offer vivid portraits of strategic communication.[669] The Mormons used strategic communication in their unsuccessful attempt to frame polygamy as their religious belief. The AFSC Quakers of the mid-twentieth century thought clearly about how to portray themselves in the public sphere, which in turn affected how the FBI approached surveilling them. Brooklyn Muslims in the *Raza* case strategically argued that the actions of the NYPD officers obstructed their religious expression, while the NYPD in turn framed its surveillance program as legitimate and necessary.

Both states and religious groups, in summary, employ strategic communication to achieve their goals.[670] The three case studies show that religious groups respond to state limitations on free expression in the public sphere by strategically communicating, or advertising, their beliefs and principles.[671] Government agencies, in turn, employ their own internal strategic communication methods to regulate and manage ideologically disruptive religious expression. The Utah Mormons coerced the Supreme Court to distinguish between religious belief and action, which inadvertently undermined their own claim to polygamy, but provided a clearer framework for future monitoring of religious expression. The AFSC Quakers helped drive the movement that demanded more accountability from the Federal Bureau of Information. The *Raza*

plaintiffs, finally, altered the process through which the NYPD opened and pursued criminal investigations related to terrorism.

In the contemporary age, religious expression has become increasingly central to international movements that threaten national security. In response, states have adjusted their discourse and reactions, such as by spreading messages that diminish the influence of those threatening religions.[672] The NYPD subtly employed this strategy through its report on radicalization that broadly aligned Islam with terrorism. United States politicians and officials who support "moderate Islam" or "Enlightenment-friendly forms of Islam" at home and abroad also use this strategy to mitigate the influence of fundamentalism.[673]

Governmental support of preferred forms of Islam has contributed to the broader United States policy of surveilling Islamic expression at home. The centrality of surveillance to modernity was important to Anthony Giddens, who saw surveillance as a phenomenon of the nation-state, and whose work is helpful in expanding how researchers consider surveillance issues: "The expansion of surveillance in the modern political order, in combination with the policing of 'deviance,' radically transforms the relation between state authority and the governed population, compared with traditional states."[674] In other words, the expansion of surveillance in society followed the expansion of the administrative capacity of the state. Through this development of surveillance with the nation-state, administrative power entered into the mundanities of daily life and interactions. Surveillance made possible the creation and control of information.[675] Giddens is among a handful of scholars who understand surveillance as a neutral, non-panoptic process that focuses on both the constraining and enabling effects of data collection. This understanding contrasts with the panoptic theories of surveillance, in which

surveillance is negative and always connected to repression, discipline, and power.[676] The non-panoptic approach to understanding government monitoring best fits this research in order to account for the nuanced approaches of the government agencies to understand the religious communities they were assessing. However, it should be noted that some Mormons engaged in Foucauldian self-monitoring in response to the government monitoring of the Territory of Utah.

Third, this dissertation demonstrates the significance of focusing on specific communities of surveilled targets rather than entire communities. While it is obvious that big data surveillance has transformed the way individuals utilize the Internet, scholars should continue to examine earlier forms of institutionalized surveillance in order to better understand the current ethical, legal, and cultural issues with which we are grappling in the post-September 11, post-Snowden era. David Murakami Wood has written that surveillance research has largely focused on four periods of the twentieth century: the late 1960s and early 1970s, associated with the end of the Vietnam war; the mid-1980s to the early 1990s, characterized by Thatcherism and Reagonomics driving surveillance in the workplace; the mid-1990s until 2001, characterized by the rise of closed-circuit televisions used for surveillance in urban areas; and the post-September 11 era.[677] Wood has also argued that surveillance analyses should focus on how surveilled places are constructed,[678] since surveillance operates at different socio-spatial levels.[679] The focus on specific communities in this dissertation aligns with this reasoning, circumventing the reductiveness of the ubiquitous phrase, surveillance society.

We should also not inflate the significance of twenty-first century media used for surveillance over much older, more mundane forms of monitoring, such as eavesdropping, which in some ways may be more effective than electronic surveillance. As John Durham Peters has

written, media such as clocks and calendars measure, control, and constitute time, much as towers assess, control, and constitute space. Such fundamental media have historically been used to monitor, regulate, organize, and observe targeted people: "These media—so fundamental that they sometimes are not seen as media at all—negotiate heaven and earth, nature and culture, cosmic and social organization and define our basic orientation to time and space. As such, they are among the most profound technologies of political and religious power and control."[680] Media integral to contemporary surveillance belong to Peters's category of calendars, clocks, and towers used for spotting enemies, which he refers to as logistical media, or media that establish coordinates of space and time.[681]

While these three examples of logistical media are quite different from one another, cultures rotate around all of them: "They belong to a neglected category of media that are so fundamental that they rarely come into view."[682] In many ways, the media used in the surveillance systems of this dissertation share more characteristics with the mundane, naturalized calendar than with the Panopticon itself. While calendars, clocks, and towers are rooted in ancient civilizations, they are also integral to contemporary daily media. Google, for example, functions as our desktops, calendars, maps, and indexes, among other communicative and organizational media. "New media," in other words, "return us to old media."[683] To better understand emergent media used for surveillance, we should return to earlier surveilling, logistical media, so as to better prepare ourselves for the days in which surveillance becomes increasingly less evident. Both the large-scale and minute logistics of each of the three monitoring systems revealed the central concerns of each case study: that is, how each government agency grappled with religious expression. Focusing on specific examples of

surveillance, such as of particular religious denominations, rather than random groups of people, permits us to avoid simplistic analyses of government surveillance. Scholars can instead research how government surveillance affects specific groups, rather than the aggregate represented by big data.

**II. Summary of the Main Themes**

One of the main themes of this dissertation was how the distinction between insider and outsider social status shaped the monitoring systems and, in turn, indicated the extent to which the religious communities would retaliate. Polygamist Mormon leaders of the Utah Territory retaliated against government monitoring by hiding in an Underground system. Despite their efforts in the Supreme Court, they did not maintain the power or reason to continue their cause. By the end of the nineteenth century, Mormons desired statehood more than polygamy.

Quakers of the AFSC were unaware of FBI surveillance until well after its beginnings in 1921. The AFSC first learned it was being surveilled by government agencies when its Chicago regional office joined a lawsuit against the city of Chicago. The AFSC Quakers initially engaged in "forced self-monitoring,"[684] as characterized by James T. Richardson and Thomas Robbins, by willingly yielding information about their activities to the FBI to maintain an open chain of communication. Yet they did so well before they were aware they were under surveillance. The AFSC later altered its method of communicating with government agents, and eventually retaliated in 1975 with its own internal government surveillance activist group, the Board Level Task Force on Government Surveillance and Citizens' Rights in 1975, which later created the Campaign to Stop Government Spying. The AFSC provided legal assistance to other groups that the FBI surveilled.

The plaintiffs in *Raza v. City of New York* fought against the NYPD surveillance practices in court. Though the plaintiffs succeeded to some degree with the settlement, the NYPD never admitted its surveillance program targeted religion or suppressed religious expression. Although the *Raza* plaintiffs confirmed their overall satisfaction with the settlement terms, many Muslim New Yorkers, including a few who feared joining the *Raza* lawsuit, expressed additional concerns about continued government surveillance of Muslim Americans at the April 2016 Fairness Hearing.

A second theme of this dissertation was the distinction between religious belief and action by government agencies, and how religious belief shaped action. Mormon polygamists coerced the Supreme Court to first distinguish between belief and action. In the early years of FBI surveillance of the AFSC, FBI agents sought to understand the tenets of Quakerism, as part of a larger investigation as to whether and how the Society of Friends related to the Service Committee. Months before activists exposed COINTELPRO after breaking into the Media FBI office, the Handschu Guidelines emerged, which protected New York City citizens from police surveillance of lawful public expression. The Guidelines were weakened in 2003 after the September 11 attacks, and then restrengthened with the 2016 *Raza* settlement to protect political and religious activities.

Critical to this theme of distinguishing between belief and action was the point at which the government agencies primarily evaluated the religious expression of the monitored communities: after the collection of information in the Supreme Court, in the case of the Utah Mormons; during FBI surveillance, in the case of the AFSC Quakers; and prior to NYPD surveillance, in the case of the Brooklyn Muslims. The differing points in which government

agents considered the theological components of religious expression correlated with the distribution of power within the government agency itself. The authority of federal government agents was decentralized in the Mormon case study, particularly given the physical and cultural distance between the Territory of Utah and the rest of the nation. Since much of the effort by federal marshals and officers focused on simply observing the Mormons and trying to track down polygamists, it was logical that they were not the government agents to thoroughly consider Mormon religiosity. Instead, Mormon theology was analyzed subsequently in the United States Supreme Court. J. Edgar Hoover sought to centralize power within the FBI, but he faced resistance from various regional FBI offices, in particular the Philadelphia office. Many of these agents throughout the long, twentieth-century surveillance of the AFSC attempted to work through the relationship between Quakerism and the AFSC. In the case of the NYPD, officers received their instructional report from two externally trained individuals who worked temporarily for the NYPD, but have moved onto other positions since the production of the report. NYPD officers sought out signs of religiously-motivated radicalization as delineated by the report produced prior to NYPD surveillance of Brooklyn Muslims.

A third core theme of this dissertation was the collection of information within different environments of civil liberties. Officers of the Utah Territory relied on spying and eavesdropping to gather the information later used to prosecute Mormon polygamists in court. Yet Supreme Court justices made a concerted effort to offer polygamy a fair trial. FBI agents surveilled AFSC Quakers by spying, but they were overall cautious and at times defensive in their approaches to surveillance. Brooklyn Muslims suffered the most intrusive means of collecting information at the hands of the NYPD officers, whose usage of the *Radicalization in the West* report,

informants, undercover cops, and video cameras was permitted by the erosion of the Handschu Guidelines in 2003. The NYPD surveillance system veered toward preemptive surveillance, in which officers tried to predict, rather than suppress, terrorism. A predictive model for surveillance raised new questions about the erosion of civil liberties in post-September 11 American society, which was propelled by the erosion of the Handschu Guidelines that the *Raza* plaintiffs had sought to correct.

**III. Looking Forward**

Government agents understandably investigate criminal activities, such as the sexual abuse of children by Catholic priests. Yet government monitoring of religious institutions is unjustified when there is no proof of criminal activity. James T. Richardson and Thomas Robbins have explicitly considered the relationship between religion and government surveillance, claiming that surveillance of religion in the United States has increased as religious groups have become more involved in society. They argue that political leaders and governmental bureaucrats may assume they have a responsibility to know what religious entities are doing, particularly when they receive public funds or offer services typically provided by the government.[685] The lack of transparency enabled corruption in some religious communities.

Yet the three case studies have emphasized the need to consider how and when government agencies collect information on religious communities whose activities are considered threatening. The ethics of how government agents collected information in the Mormon and Quaker case studies were considered, as was the preemptive collection of information about Muslim Americans by the NYPD. Government agencies such as the Internal Revenue Service (IRS) or the Food and Drug Administration (FDA) can gather information

through surveillance and monitoring about religious groups whose actions fall within the jurisdictions of the agencies.[686] However the IRS and FDA generally identify the foci prior to investigating, as opposed to debating the problem of religious expression within the surveillance system, as we saw in the Quaker case study, or substituting an indicator such as beard growth for religious expression, as we recall from the Muslim case study. In the United States, the presumption is that a religious organization is a voluntary association that benefits from independence from government control, oversight, and finances. But the increasing role of state and federal government agencies surveilling and regulating religion challenges this presumption.[687]

Researchers of surveillance of United States religious institutions could examine surveilled religious communities that were not analyzed in this research. Additionally, they might investigate to what extent, if at all, government agencies considered mass media portrayals or public opinion of the religions that they were monitoring. Third, they might research how government agencies surveil the religious expression of non-citizens living within their borders, or of their own citizens living abroad. As cultural beliefs and ideas are increasingly communicated in and across digital environments, this latter focus on transnational surveillance will become critical for government leaders, policymakers, and citizens alike.

Finally, future scholars might consider how to approach topics of religion and media from beyond the transmission or ritual models, by recognizing the nuanced ways in which religion manifests itself in society, as well as by recognizing the contribution that is gained by analyzing heavily studied social phenomena, such as surveillance, through the lens of religion. Throughout the research and writing process, I struggled with my own personal investment in this research in

the ways I analyzed the evidence and articulated my claims, closely considering every word and phrase to strive for objectivity. Impassioned newspaper or policy articles about government surveillance are necessary, particularly since those individuals who are surveilled might lack the agency to initiate their defense without public support. Yet scholarly investigations of surveillance should avoid polarized language in order to fairly analyze the monitoring methods of the government agencies and, simultaneously, the actions and beliefs of the surveilled religious communities. By doing so, we can engage in more compassionate transnational societies, in which religious expression may or may not be recognizable to our twenty-first century eyes.

---

[664] Daniel A. Stout, *Media and Religion: Foundations of an Emerging Field* (New York: Routledge, 2012), 1-2.

[665] James Carey, "Preface," *Journal of Media and Religion* 1, no. 1 (2002): 1-3; Stewart Hoover, "Religion, Media, and the Cultural Center of Gravity," in *Religion and Popular Culture: Studies on the Interaction of Worldviews*, ed. Daniel A. Stout and Judith M. Buddenbaum (Ames: Iowa State University Press, 2001): 49-60.

[666] Carey, "Preface," 1.

[667] Carey, "Preface," 2.

[668] Monroe Price, *Free Expression, Globalism, and the New Strategic Communication* (Cambridge: Cambridge University Press: 2015), 3.

[669] Price, *Free Expression, Globalism, and the New Strategic Communication*, 153.

[670] Price, *Free Expression, Globalism, and the New Strategic Communication*, 154.

[671] Price, *Free Expression, Globalism, and the New Strategic Communication*, 170.

[672] Price, *Free Expression, Globalism, and the New Strategic Communication*, 155.

[673] Price, *Free Expression, Globalism, and the New Strategic Communication*, 160-161.

[674] Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity Press, 1985), 309.

[675] Giddens, *The Nation-State and Violence*, 312.

[676] Thomas Allmer, "Critical Surveillance Studies in the Information Society," *tripleC: Communication, Capitalism & Critique* 9, no. 2 (2011): 578, http://www.triple-c.at/index.php/tripleC/article/viewFile/266/315.

[677] Wood, "The 'Surveillance Society,'" 181-187.

[678] On this topic, see Anna Vemer Andrzejewski, *Building Power: Architecture and Surveillance in Victorian America* (Knoxville: University of Tennessee Press, 2008).

[679] Wood, "The 'Surveillance Society,'" 189.

[680] John Durham Peters, "Calendar, Clock, Tower," in *Deus in Machina: Religion, Technology, and the Things in Between*, ed. Jeremy Stolow (New York: Fordham University Press, 2013), 25.

[681] Peters, "Calendar, Clock, Tower," 41.

[682] Peters, "Calendar, Clock, Tower," 41.

[683] Peters, "Calendar, Clock, Tower," 42.

[684] James T. Richardson and Thomas Robbins, "Monitoring and Surveillance of Religious Groups in the United States," in *The Oxford Handbook of Church and State in the United States*, ed. Derek H. Davis (Oxford: Oxford University Press, 2010), 357.

[685] Richardson and Robbins, "Monitoring and Surveillance of Religious Groups in the United States," 353.

[686] Richardson and Robbins, "Monitoring and Surveillance of Religious Groups in the United States," 356.

[687] James E. Wood, Jr., "Government Intervention in Religious Affairs," in *The Role of Government in Monitoring and Regulating Religion in Public Life* (Waco: Baylor University Press, 1993), 4-5.

## Primary Sources

### *Archival Collections*

American Friends Service Committee Archives. FBI Material. "CIA/Air Force/Army/Navy" Folder. Philadelphia, Pennsylvania.

American Friends Service Committee Archives. FBI Material. "Criticisms & Investigations" Folder. Philadelphia, Pennsylvania.

American Friends Service Committee Archives. FBI Material. "FBI Material Received on Appeal, 4/80" Folder. Philadelphia, Pennsylvania.

American Friends Service Committee Archives. FBI Material. FOIA Box No. 1. Philadelphia, Pennsylvania.

American Friends Service Committee Archives. FBI Material. "Government Surveillance" Folder. Philadelphia, Pennsylvania.

Ann Morrissett Davidon and William C. Davidon Papers (DG 144), Swarthmore College Peace Collection. Accessed February 24, 2016.

### *Court Cases*

Bassett v. United States. 137 U.S. 496 (1890).

Cannon v. United States. 116 U.S. 55 (1885).

Clawson v. United States. 113 U.S. 143 (1885).

Edward Friel v. Lyman S. Wood, Administrator of the Estate of Lambson, Deceased, 1 Utah 160 (1874).

Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States. 136 U.S. 1 (1890).

Miles v. United States. 103 U.S. 304 (1880).

Murphy v. Ramsey. 114 U.S. 15 (1885).

Raza v. City of New York (E.D.N.Y. 2014) (No. 13-CV-03448).

Reynolds v. United States. 98 U.S. 145 (1878).

Snow v. United States. 118 U.S. 346 (1886).

United States v. A. Milton Musser. 4 Utah 153 (1885).

*Court Documents*

"Answer of Defendants City of New York, Michael R. Bloomberg, Raymond Kelly, and David Cohen." Raza v. City of New York (E.D.N.Y. 2013) (No. 13-CV-03448).

"Complaint." Raza v. City of New York (E.D.N.Y. 2013) (No. 13-CV-03448).

"Defendants' Memorandum of Law in Opposition to Plaintiffs' Objections to Defendants' Interrogatories Purportedly on Grounds of First Amendment Associational Privilege and So-Called 'Retroactive Justification.'" Raza v. City of New York (E.D.N.Y. 2014) (No. 13-CV-03448).

"Opinion of William J. Martini, District Judge, Hassan v. City of New York, Civ. No. 2:12-3401." February 20, 2014.

"Plaintiffs' Reply Brief Concerning Interrogatories Challenged on Grounds of First Amendment Privilege and Retroactive Justification." Raza v. City of New York (E.D.N.Y. 2014) (No. 13-CV-03448).

Reynolds v. United States. 98 U.S. 145 (1878). Brief for Plaintiff-in-Error (1878). Filed October 2, 1876. Accessed February 5, 2015. *United States Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

*Government Documents*

Buchanan, James. "Cessation of Difficulties in Utah: Message from the President of the United States Relative to the Probable Termination of Mormon Troubles in Utah Territory." Serial Set Vol. No. 959, Session Vol. No.13. 35th Congress, 1st Session. H. Exec. Doc. 138 (1858).

Committee on the Territories, United States Congress, House. "Notes of a Hearing on Bill (H.R. 524): 'For the Local Government of Territory of Utah and To Provide for the Election of Certain Officers in Said Territories,' Feb. 10, 16, 17, 19, 20, Before the Committee on the Territories." 52nd Congress, 1st Session (1892).

Labin, Suzanne. *The Techniques of Soviet Propaganda: A Study Presented by the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security*

*Laws of the Committee on the Judiciary United States Senate.* 86th Congress, 2nd Session. Washington: G.P.O., 1960.

"Memorial Adopted by the Citizens of Salt Lake City, Territory of Utah, at a Mass Meeting Held in Said City March 31, 1870: Remonstrating against the Passage of the Bill (H. R. No. 1089) 'in Aid of the Execution of the Laws in the Territory of Utah, and for Other Purposes,'" S. Misc. Doc. 112 (1870).

Silber, Mitchell D. and Arvin Bhatt. *Radicalization in the West: The Homegrown Threat*. New York: New York Police Department, 2007.

*Special Report of the Utah Commission, Made to the Secretary of the Interior, 1884*. H. Exec. Doc. 153. Washington: G.P.O., 1884.

*Magazines and Newspapers*

*The Albany Law Journal: A Weekly Record of the Law and the Lawyers*

*The Atlanta Constitution*

*The Atlantic*

*The Christian Science Monitor*

*Commonweal*

*Daily Albany Argus*

*The Daily Picayune*

*Evening Post*

*The Hill*

*The Huffington Post*

*Human Events*

*Lowell Daily Citizen and News*

*The Nation*

*New York Herald*

*New York Times*

*New York Tribune*

*Plain Dealer*

*The Washington Post*

*Other*

ACLU. "Factsheet: The NYPD Muslim Surveillance Program." Accessed April 29, 2015.

———. "History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement," May 2007.

———. "Landmark Settlement Protects American Muslims From Discriminatory NYPD Surveillance," January 7, 2016.

———. "Raza v. City of New York – Legal Challenge to NYPD Muslim Surveillance Program," January 7, 2016.

Apuzzo, Matt, and Adam Goldman. "Informant: NYPD Paid Me to 'Bait' Muslims." *Associated Press*, October 23, 2012.

———. "With CIA Help, NYPD Moves Covertly in Muslim Areas." *Associated Press*, August 23, 2011.

Bennett, John C. *The History of the Saints, Or, An Exposé of Joe Smith and Mormonism*. Boston: Leland & Whiting, 1842.

Bowles, Samuel. *Our New West: Records of Travel Between The Mississippi River and the Pacific Ocean*. Hartford: Hartford Publishing Company, 1869.

Hudson, Frederic. *Journalism in the United States, from 1690 to 1872: Volume II*. New York: Harper & Brothers Publishers, 1873.

Forbes, John. *The Quaker Star Under Seven Flags: 1917-1927*. Philadelphia: University of Pennsylvania Press, 1962.

Jones, Gerald. *On Doing Good*. New York: Charles Scribner's Sons, 1971.

Jones, Lester M. *Quakers in Action: Recent Humanitarian and Reform Activities of the American Quakers*. New York: The Macmillan Company, 1929.

Kavanaugh, John, ed. *The Quaker Approach to Contemporary Problems*. New York: G. P. Putnam's Sons, 1953.

League for Social Service. *Reasons Why Brigham H. Roberts Should Be Expelled from the United States Congress.* New York: League for Social Service, 1898.

Lee, John Doyle. *Mormonism Unveiled; Including the Remarkable Life and Confessions of the Late Mormon Bishop, John D. Lee (Written by Himself) and Complete Life of Brigham Young*. Edited by William W. Bishop. St. Louis: M.E. Mason, 1891.

Locke, John. *A Letter Concerning Toleration*. Translated by William Popple, 1689.

Lum, Dyer D. *Social Problems of to-Day; Or, The Mormon Question in Its Economic Aspects, a Study of Co-Operation and Arbitration in Mormondom, from the Standpoint of a Wage-Worker: Vol. 1*. Port Jervis: D. D. Lum & Co., 1886.

Nichols, J. Horatio. *Marriage: Monogamy and Polygamy on the Basis of Divine Law, of Natural Law, and of Constitutional Law: An Open Letter to the Massachusetts Members of Congress, by One of Their Constituents, with Observations on the Opinion of the Supreme Court in Reynolds vs. United States, 98 U.S. Supreme Court Reports*. Boston: James Campbell, 1882.

Nimmo, Joseph. *The Mormon Usurpation: An Open Letter Addressed to the Committee on the Judiciary of the House of Representatives*. Huntington: "The Long-Islander" Print, 1886.

Pickett, Clarence E. *For More Than Bread: An Autobiographical Account of Twenty-Two Years' Work with the American Friends Service Committee*. Boston: Little, Brown and Company, 1953.

Rich, Benjamin Erastus. *Are the Mormons Loyal to the Government? A Rejected Manuscript: An Answer to a Charge Which Appeared in Pearson's Magazine.* New York: Eastern States Mission, Church of Jesus Christ of Latter-Day Saints, 1910.

Roberts, Elder B. H. *Recent Discussion of Mormon Affairs*. Salt Lake City: The Deseret News, 1907.

Schroeder, Theodore. *Constitutional Free Speech Defined and Defended in an Unfinished Argument in a Case of Blasphemy*. New York: Free Speech League, 1919.

Shamsi, Hina. “Landmark Settlement in Challenge to NYPD Surveillance of New York Muslims: What You Need to Know.” *ACLU*, January 7, 2016.

Sloan, Edward L., ed. *Gazeteer* [sic] *of Utah and Salt Lake City Directory, 1874*. Salt Lake City: “Salt Lake Herald” Publishing Company, 1874.

Sloan, Robert W., ed. *Utah Gazetteer and Directory of Logan, Ogden, Provo and Salt Lake Cities for 1884*. Salt Lake City: Herald Printing and Publishing Company, 1884.

Stillman, James Wells. *The Constitutional and Legal Aspect of the Mormon Question*. Boston: Stillman, 1882.

Townsend, George Alfred. *The Mormon Trials at Salt Lake City*. New York: American News Company, 1871.

*Utah Statehood: Reasons Why It Should Not Be Granted. Will the American People Surrender the Territory to an Unscrupulous and Polygamous Theocracy?*. Salt Lake City: Tribune Print, 1887.

Weisbord, Marvin R. *Some Form of Peace: True Stories of the American Friends Service Committee at Home and Abroad*. New York: The Viking Press, 1968.

*Public Meetings or Hearings*

Fairness Hearing on the *Raza* Settlement. Hearing held before Hon. Charles S. Haight, United States District Court, Southern District of New York, Moynihan Federal Courthouse. New York, New York. April 19, 2016.

Public Meeting in preparation for the *Raza* Fairness Hearing. Meeting presented at the A. J. Muste Memorial Institute. New York, New York. March 31, 2016.

*Transcripts*

Bennett, Charles William. *To the Senate and House of Representatives, in Congress Assembled: With Profound Respect We Represent: Is the Mormon Problem Understood?*. n.l.: n.p., 1883.

Broadhead, James O. “The United States vs. the Corporation of the Church of Jesus Christ of Latter-Day Saints / Wilford Woodruff, Et. Al.; Argument Delivered on Oct. 20, 1887.” St. Louis: Pierce Bros., 1887.

Church of Jesus Christ of Latter-day Saints. *That Mormon Protest: Its Full Text, and a Report of the Proceedings of the Salt Lake Mass Meeting of May 2nd, 1885: Comments and Review*

*by "The Tribune."* HathiTrust Digital Library, 2011. Salt Lake City: Jos. Hyrum Parry & Co, 1885.

Clawson v. United States. 113 U.S. 143 (1885). Transcript of Record (1884). Filed February 5, 1885. Accessed February 14, 2015. *United States Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

Curtis, George Ticknor. *A Plea for Religious Liberty and the Rights of Conscience: An Argument Delivered in the Supreme Court of the United States, April 28, 1886, in Three Cases of Lorenzo Snow, Plaintiff in Error, v. The United States, on Writs of Error to the Supreme Court of Utah Territory*. Washington: Gibson Bros., 1886.

Hale, Eugene. *Polygamy: The Work of the Industrial Christian Home Association of Utah Territory. Speech of Hon. Eugene Hale, of Maine, in the Senate of the United States, October 2, 1888*. Washington: G.P.O., 1888.

Hooper, William Henry. *The Utah Bill: A Plea for Religious Liberty. Speech of Hon. W.H. Hooper, of Utah, Delivered in the House of Representatives, March 23, 1870 : Together with the Remonstrance of the Citizens of Salt Lake City, in Mass Meeting, Held March 31, 1870, to the Senate of the United States.* Washington: Gibson Brothers, 1870.

"In the Senate of the United States, Presented by Mr. Edmunds, Referred to the Committee on Territories, and Ordered to Be Printed. Memorial of Mrs. Angie F. Newman, Remonstrating against the Admission of Territory of Utah into the Union as a State so Long as the Administration of the Affairs of That Territory Continues in the Hands of the Mormon Priesthood." S. Misc. Doc. 201, September 21, 1888.

"Investigation of Un-American Propaganda Activities in the United States, Hearings on H. R. 1884 and H. R. 2122, Bills to Curb or Outlaw the Communist Party of the United States, Part 2, Before the Committee on Un-American Activities." Statement of J. Edgar Hoover, Director of the Federal Bureau of Investigation. 80th Congress, 1st Session (1947).

Irvine, John. "*Mormon" Protest Against Injustice: An Appeal for Constitutional and Religious Liberty; Full Report of the Great Mass Meeting Held in Salt Lake City.* May 2, 1885. Salt Lake City: Jos. Hyrum Parry & Co., 1885.

Ladies of the Church of Jesus Christ of Latter-day Saints. *"Mormon" Women's Protest: An Appeal for Justice and Equal Rights: Full Account of Proceedings at the Great Mass Meeting.* Salt Lake City: Deseret News Co., 1886.

Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States. 136 U.S. 1 (1890). Transcript of Record (1889). Filed October 26, 1888. Accessed February 14,

2015. *United States Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning. Columbia University.

Miles v. United States. 103 U.S. 304 (1880). Transcript of Record (1880). Filed October 13, 1879. Accessed February 5, 2015. *United States Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

Murphy v. Ramsey. 114 U.S. 15 (1885). Transcript of Record (1884). Filed October 9, 1884. Accessed February 12, 2015. *United States Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

Nimmo Jr., Joseph. "Hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives as to the Wisdom and Advisability of Conferring on the Interstate Commerce Commission the Authority to Prepare Schedules and to Make Railroad Rates." Committee on Interstate and Foreign Commerce. 57th Congress, 1st Session (1902).

Reynolds v. United States. 98 U.S. 145 (1878). Transcript of Record (1878). Filed October 4, 1876. Accessed February 9, 2015. *United States Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

Snow v. United States. 118 U.S. 346 (1886). Transcript of Record (1885). Filed March 2, 1886. Accessed February 14, 2015. *United States Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning.

"Transcript of Civil Cause for Discovery Conference Before Joan M. Azrack, United States Magistrate Judge." Raza v. City of New York (E.D.N.Y. 2014) (No. 13-CV-03448).

"Transcript of Civil Cause for Discovery Conference Before Robert Terranova, Law Clerk for Honorable Joan M. Azrack." Raza v. City of New York (E.D.N.Y. 2014) (No. 13-CV-03448).

"Transcript of Civil Cause for Initial Conference Before the Honorable Joan M. Azrack, United States Magistrate Judge." Raza v. City of New York (E.D.N.Y. 2013) (No. 13-CV-03448).

Wilson, Jeremiah M. *The Admission of Utah, January 19-22, Before the House Committee on Territories*. 50th Congress, 2nd Session (1889).

**Secondary Sources**


Allmer, Thomas. "Critical Surveillance Studies in the Information Society." *tripleC: Communication, Capitalism & Critique* 9, no. 2 (2011): 566-592.

An-Na'im, Abdullah Ahmed. *What Is An American Muslim? Embracing Faith and Citizenship*. New York: Oxford University Press, 2014.

Appelbaum, Patricia. *Kingdom to Commune: Protestant Pacifist Culture between World War I and the Vietnam Era*. Chapel Hill: University of North Carolina Press, 2009.

Appelbaum, Patricia. "Protestant Mysticism: Pacifists and the 'Practice of the Presence.'" *Quaker History* 94, no. 2 (2005): 1–24.

Ariens, Michael S., and Robert A. Destro. *Religious Liberty in a Pluralistic Society*. Durham: Carolina Academic Press, 1996.

Arrington, Leonard J., and Davis Bitton. *The Mormon Experience: A History of the Latter-Day Saints*. 2nd ed. Chicago: University of Illinois Press, 1979.

Arrington, Leonard J. *Brigham Young: American Moses*. Urbana: University of Illinois Press, 1986.

———. "The Deseret Telegraph: A Church-owned Public Utility." *The Journal of Economic History* 11, no. 2 (1951): 117–139.

Austin, Allan W. *Quaker Brotherhood: Interracial Activism and the American Friends Service Committee, 1917-1950*. Urbana: University of Illinois Press, 2012.

Bagby, Ihsan. "Mosques in the United States." In *The Oxford Handbook of American Islam*, edited by Jane I. Smith and Yvonne Y. Haddad, 225–236. New York: Oxford University Press, 2014.

Baker, Aaron. "Controlling Racial and Religious Profiling: Article 14 ECHR Protection v. U.S. Equal Protection Clause Prosecution." *Texas Wesleyan Law Review* 13, no. 2 (2007): 285–309.

Balogh, Brian. *A Government Out of Sight: The Mystery of National Authority in Nineteenth-Century America*. New York: Cambridge University Press, 2009.

Baltzell, E. Digby. *The Protestant Establishment: Aristocracy & Caste in America* (New Haven: Yale University Press, 1964).

Barlow, Philip L. *Mormons and the Bible: The Place of the Latter-Day Saints in American Religion*. New York: Oxford University Press, 2013.

Baumgardner, Paul. "Reevaluating Reynolds: The Constitutional Case for Religiously Motivated Polygamy." *Journal of Politics and Law* 6, no. 1 (2013): 1-14.

Bayoumi, Moustafa. *This Muslim American Life: Dispatches from the War on Terror*. New York: New York University Press, 2015.

Beydoun, Khaled A. "Between Indigence, Islamophobia, and Erasure: Poor and Muslim in 'War on Terror' America." *California Law Review*, forthcoming 2016, 1–42.

Bitton, Davis. *The Ritualization of Mormon History, and Other Essays*. Urbana: University of Illinois Press, 1994.

Braman, Sandra. *Change of State: Information, Policy, and Power*. Cambridge: MIT Press, 2006.

Brennan, John O., Bennie Thompson, Philip Mudd, Sheriff Leroy Baca, Nura Maznavi, and Geoffrey Stone. "Counterterrorism's New Frontier: Intelligence Collection and Law Enforcement." In *Democracy & Justice: Collected Writings*, 62–77. New York: Brennan Center for Justice at NYU Law, 2012.

Brooks, Frank Hans. "Anarchism, Revolution, and Labor in the Thought of Dyer D. Lum: 'Events Are the True Schoolmasters.'" PhD diss., Cornell University, 1988. ProQuest (AAT 8900770).

Brudnoy, David. "Liberty's Bugler: The Seven Ages of Theodore Schroeder." PhD diss., Brandeis University, 1971. ProQuest (AAT 7130119).

Bushman, Claudia Lauper, and Richard Lyman Bushman. *Building the Kingdom: A History of Mormons in America*. New York: Oxford University Press, 1999.

Bushman, Richard Lyman. *Mormonism: A Very Short Introduction*. New York: Oxford University Press, 2008.

Cainkar, Louise A. *Homeland Insecurity: The Arab American and Muslim American Experience After 9/11*. New York: Russell Sage Foundation, 2011.

Calhoun, Richard Frank. "George Ticknor Curtis: Nineteenth Century Constitutional Historian and Publicist." PhD diss., University of Maryland College Park, 2001. ProQuest (AAT 3024907).

Carey, James. "Preface." *Journal of Media and Religion* 1, no. 1 (2002): 1–3.

Carmella, Angela C. “The Religion Clauses and Acculturated Religious Conduct: Boundaries for the Regulation of Religion.” In *The Role of Government in Monitoring and Regulating Religion in Public Life*, edited by James E. Wood, Jr. and Derek Davis, 21–49. Waco: Baylor University Press, 1993.

Casanova, José. *Public Religions in the Modern World*. Chicago: University of Chicago Press, 1994.

Clark, Roger. “Information Technology and Dataveillance.” *Communications of the ACM* 31, no. 5 (1988): 498–512.

Cookson, Catharine. *Regulating Religion: The Courts and the Free Exercise Clause*. New York: Oxford University Press, 2001.

Correia, David. “Making Destiny Manifest: United States Territorial Expansion and the Dispossession of Two Mexican Property Claims in New Mexico, 1824–1899.” *Journal of Historical Geography* 35, no. 1 (2009): 87–103. doi:10.1016/j.jhg.2008.02.002.

Davies, Philip H. J. *Intelligence and Government in Britain and the United States, A Comparative Perspective–Vol. 1: Evolution of the United States Intelligence Community*. Santa Barbara: Praeger, 2012.

Davis, Derek. “The Courts and the Constitutional Meaning of ‘Religion’: A History and Critique.” In *The Role of Government in Monitoring and Regulating Religion in Public Life*, edited by James E. Wood, Jr. and Derek Davis, 89–119. Waco: Baylor University Press, 1993.

Daynes, Kathryn M. *More Wives Than One: Transformation of the Mormon Marriage System, 1840–1910*. Urbana: University of Illinois Press, 2001.

Fink, Steven R. “Preaching as Reimagining: Post-9/11 Khutbahs in the United States and Canada.” *Comparative Islamic Studies* 3, no. 2 (2007): 195–212. doi:10.1558/cis.v3i2.195.

Flake, Kathleen. *The Politics of American Religious Identity: The Seating of Senator Reed Smoot, Mormon Apostle*. Chapel Hill: University of North Carolina Press, 2004.

Fluhman, J. Spencer. *“A Peculiar People”: Anti-Mormonism and the Making of Religion in Nineteenth-Century America*. Chapel Hill: University of North Carolina Press, 2012.

Foner, Eric. *The Story of American Freedom*. New York: W. W. Norton & Company, 1998.

Foster, Lawrence. *Religion and Sexuality: Three American Communal Experiments of the Nineteenth Century*. New York: Oxford University Press, 1981.

———. "Sex and Conflict in New Religious Movements: A Comparison of the Oneida Community under John Humphrey Noyes and the Early Mormons under Joseph Smith and His Would-Be Successors." *Nova Religio: The Journal of Alternative and Emergent Religions* 13, no. 3 (2010): 34–58. doi:10.1525/nr.2010.13.3.34.

Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan. New York: Vintage Books, 1977.

Frost, J. William. "'Our Deeds Carry Our Message': The Early History of the American Friends Service Committee." *Quaker History* 81, no. 1 (1992): 1–51.

Gerstle, Gary. *Liberty and Coercion: The Paradox of American Government From the Founding to the Present*. Princeton: Princeton University Press, 2015.

Giddens, Anthony. *The Nation-State and Violence*. Cambridge: Polity Press, 1985.

Goitein, Elizabeth. "The First Amendment and Domestic Intelligence Gathering." In *Domestic Intelligence: Our Rights and Safety*, 59–63. New York: Brennan Center for Justice at NYU Law, 2013.

Goldford, Dennis J. *Constitution of Religious Freedom: God, Politics, and the First Amendment*. Waco: Baylor University Press, 2012.

Gordon, Sarah Barringer. *The Spirit of the Law: Religious Voices and the Constitution in Modern America*. Cambridge: The Belknap Press of Harvard University Press, 2010.

———. *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America*. Chapel Hill: The University of North Carolina Press, 2002.

Graber, Mark A. *Transforming Free Speech: The Ambiguous Legacy of Civil Libertarianism*. Berkeley: University of California Press, 1991.

Graham, William A. "Traditionalism in Islam: An Essay in Interpretation." *The Journal of Interdisciplinary History* 23, no. 3 (1993): 495–522. http://www.jstor.org/stable/206100.

Greenawalt, Kent. *Interpreting the Constitution*. New York: Oxford University Press, 2015.

Greenberg, Ivan. *The Dangers of Dissent: The FBI and Civil Liberties since 1965*. New York: Lexington Books, 2010.

Grewal, Zareena. *Islam Is a Foreign Country: American Muslims and the Global Crisis of Authority*. New York: New York University Press, 2014.

Haefeli, Evan. "The Problem with the History of Toleration." In *Politics of Religious Freedom*, edited by Winifred Fallers Sullivan, Elizabeth Shakman Hurd, and Saba Mahmood, 105–114. Chicago: University of Chicago Press, 2015.

Hallwas, John E., and Roger D. Launius. *Cultures in Conflict: A Documentary History of the Mormon War in Illinois*. Logan: Utah State University Press, 1995.

Hamm, Thomas D. *The Quakers in America*. New York: Columbia University Press, 2003.

Heise, Tammy. "Marking Mormon Difference: How Western Perceptions of Islam Defined the 'Mormon Menace.'" *The Journal of Religion and Popular Culture* 25, no. 1 (2013): 82–97. doi:10.3138/jrpc.25.1.82.

"Herbert Clark Hoover: A Biographical Sketch." *Herbert Hoover Presidential Library Museum*. Accessed February 23, 2016.

"History Of The District of Utah's U.S. Attorney's Office." *United States Department of Justice, The United States Attorney's Office, District of Utah*, March 13, 2015.

Hollinger, David A. *After Cloven Tongues of Fire: Protestant Liberalism in Modern American History*. Princeton: Princeton University Press, 2015.

Hoover, Stewart. "Religion, Media, and the Cultural Center of Gravity." In *Religion and Popular Culture: Studies on the Interaction of Worldviews*, edited by Daniel A. Stout and Judith M. Buddenbaum, 49–60. Ames: Iowa State University Press, 2001.

Hutchison, William R. "Protestantism as Establishment." In *Between the Times: The Travail of the Protestant Establishment in America, 1900–1960*, edited by William R. Hutchison, 3–18. New York: Cambridge University Press, 1989.

Huq, Aziz. "Concerns with Mitchell D. Silber & Arvin Bhatt, N.Y. Police Dep't, Radicalization in the West: The Homegrown Threat (August 2007)," August 30, 2007.

Ingle, H. Larry. "The American Friends Service Committee, 1947-49: The Cold War's Effect." *Peace & Change* 23, no. 1 (1998): 27–48. doi:10.1111/0149-0508.691998035.

Jakobsen, Janet R., and Ann Pellegrini, ed. *Secularisms*. Durham: Duke University Press, 2008.

Johnson, Marilynn S. "Challenging Police Repression: Federal Activism and Local Reform in New York City." In *Uniform Behavior: Police Localism and National Politics*, edited by

Stacy K. McGoldrick and Andrea McArdle, 73–96. New York: Palgrave Macmillan, 2006.

Juynboll, G. H. A. *Encyclopedia of the Canonical Hadith*. Boston: Brill Academic Publishers, 2007.

Kerstetter, Todd M. *God's Country, Uncle Sam's Land: Faith and Conflict in the American West*. Chicago: University of Illinois Press, 2006.

Kessler, Jeremy K. "The Administrative Origins of Modern Civil Liberties Law." *Columbia Law Review* 114, no. 5 (2014): 1083–1166.

Kessler, Ronald. *The Bureau: The Secret History of the FBI*. New York: St. Martin's Press, 2002.

Kumar, Deepa. *Islamophobia and the Politics of Empire*. Chicago: Haymarket Books, 2012.

Larson, Gustive O. *The "Americanization" of Utah for Statehood*. San Marino, Calif.: Huntington Library Press, 1971.

Lyon, David. *Surveillance Society: Monitoring Everyday Life*. Philadelphia: Open University, 2001.

Marx, Gary. "The Surveillance Society: The Threat of 1984-Style Techniques." *The Futurist* 6 (1985): 21–26.

Mason, Patrick. *The Mormon Menace: Violence and Anti-Mormonism in the Postbellum South*. New York: Oxford University Press, 2011.

Maxwell, John Gary. *Robert Newton Baskin and the Making of Modern Utah*. Norman, Oklahoma: University of Oklahoma Press, 2013.

McArdle, Andrea. "Policing After September 11: Federal–Local Collaboration and the Implications for Police–Community Relations." In *Uniform Behavior: Police Localism and National Politics*, edited by Stacy K. McGoldrick and Andrea McArdle, 177–202. New York: Palgrave Macmillan, 2006.

Mendieta, Eduardo. *The Power of Religion in the Public Sphere*, edited by Jonathan Van Antwerpen. New York: Columbia University Press, 2011.

Nichols, Jeffrey D. *Prostitution, Polygamy, and Power: Salt Lake City, 1847-1918*. Urbana: University of Illinois Press, 2002.

"Of the Sacraments, 872." *Historical Documents of the Church*. Accessed February 8, 2016.

Patel, Faiza, ed. *Domestic Intelligence: Our Rights and Our Safety*. New York: Brennan Center for Justice at NYU Law, 2013.

Patel, Faiza. *Rethinking Radicalization*. New York: Brennan Center for Justice at NYU Law, 2011.

Patel, Faiza, and Andrew Sullivan. *A Proposal for an NYPD Inspector General*. New York: Brennan Center for Justice at NYU Law, 2012.

Pellegrini, Ann, and Janet R. Jakobsen. *Love and Sin: Sexual Regulation and the Limits of Religious Tolerance*. New York: New York University Press, 2003.

Peters, John Durham. "Calendar, Clock, Tower." In *Deus in Machina: Religion, Technology, and the Things in Between*, edited by Jeremy Stolow, 25–42. New York: Fordham University Press, 2013.

Pfluger-Schindlbeck, Ingrid. "On the Symbolism of Hair in Islamic Societies: An Analysis of Approaches." *Anthropology of the Middle East.* 2, no. 1 (2006): 72–88.

Powell, Allan Kent. "Utah Territory." In *Encyclopedia of Mormonism*, edited by Daniel H. Ludlow, 1503–1505. New York: Macmillan Publishing Company, 1992.

Price, Monroe. *Free Expression, Globalism, and the New Strategic Communication*. Cambridge: Cambridge University Press, 2015.

Rabban, David M. *Free Speech in Its Forgotten Years*. New York: Cambridge University Press, 1997.

Reeve, W. Paul. *Religion of a Different Color: Race and the Mormon Struggle for Whiteness*. New York: Oxford University Press, 2015.

"Religious Belief, Definition Of." In *Contemporary Legal Issues: Encyclopedia of Religion and the Law in America*. Amenia: Grey House Publishing, 2009.

Richardson, James T., and Thomas Robbins. "Monitoring and Surveillance of Religious Groups in the United States." In *The Oxford Handbook of Church and State in the United States*, edited by Derek H. Davis, 353–369. New York: Oxford University Press, 2010.

Schneider, Lou. "Introduction." In *Undaunted Spirits: True Stories of Quaker Service,* edited by Melissa K. Elliott. Philadelphia: American Friends Service Committee, 2002.

Schudson, Michael. *The Rise of the Right to Know: Politics and the Culture of Transparency, 1945-1975*. Cambridge: The Belknap Press of Harvard University Press, 2016.

Schwarz, Jr., Frederick A. O. "An Historic Perspective of Intelligence Gathering." In *Domestic Intelligence: Our Rights and Our Safety*, edited by Faiza Patel, 53–56. New York: Brennan Center for Justice at NYU Law, 2013.

Sehat, David. *The Myth of Religious Freedom in America*. New York: Oxford University Press, 2011.

Seipp, David J. *The Right to Privacy in American History*. Cambridge: Harvard University Press, 1978.

Siegel, Stephen A. "The Origin of the Compelling State Interest Test and Strict Scrutiny," *The American Journal of Legal History* 48, no. 4 (2006): 355–407.

Soll, Jacob. *The Information Master: Jean-Baptiste Colbert's Secret State Intelligence System*. Ann Arbor: University of Michigan Press, 2011.

Stark, Rodney. *The Rise of Mormonism*. New York: Columbia University Press, 2005.

Stephens, Randall. "Surprising or Otherwise Interesting Primary Sources, IX: Jedgar on Sunday School." *Religion in American History*, October 27, 2010.

Stolow, Jeremy. "Introduction: Religion, Technology, and the Things in Between." In *Deus in Machina: Religion, Technology, and the Things in Between*, edited by Jeremy Stolow, 1–24. New York: Fordham University Press, 2013.

Stout, Daniel A. *Media and Religion: Foundations of an Emerging Field*. New York: Routledge, 2012.

Sullivan, Winifred Fallers, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin. "Introduction." In *Politics of Religious Freedom*, edited by Winifred Fallers Sullivan, Elizabeth Shakman Hurd, and Saba Mahmood, 1–9. Chicago: University of Chicago Press, 2015.

Sutters, Jack. "Warmth and Sweetness: The Beginnings of a Postwar Feeding Program in Germany." *American Friends Service Committee*, March 29, 2010.

———. "The Birth of the AFSC." In *Undaunted Spirits: True Stories of Quaker Service*, edited by Melissa K. Elliott. Philadelphia: American Friends Service Committee, 2002.

Talbot, Christine. *Mormons and Polygamy in American Political Culture, 1852-1890*. Urbana: University of Illinois Press, 2013.

Taylor, Charles. *A Secular Age*. Cambridge: The Belknap Press of Harvard University Press, 2007.

"The Chilling Effect in Constitutional Law." *Columbia Law Review* 69, no. 5 (1969): 808–842. doi:10.2307/1121147.

Tyler, Tom R., Stephen J. Schulhofer, and Aziz Z. Huq. "Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans." *Law and Society Review* 44, no. 2 (2010): 365–401.

"Utah Commission: Agency History #1249," Utah Department of Administrative Services, Division of Archives & Records Service. June 2, 2009.

Van Wagoner, Richard S. *Mormon Polygamy: A History*. 2nd ed. Salt Lake City: Signature Books, 1989.

Vitale, Gary. "Abraham Lincoln and the Mormons: Another Legacy of Limited Freedom." *Journal of the Illinois State Historical Society* 101, no. 3 (2008): 260–271.

Walker, III, William O. *National Security and Core Values in American History*. New York: Cambridge University Press, 2009.

Wood, David Murakami. "The 'Surveillance Society': Questions of History, Place, and Culture." *European Journal of Criminology* 6, no. 2 (2009): 179–194, doi: 10.1177/1477370808100545.

Wood, Jr., James E.. "Government Intervention in Religious Affairs: An Introduction." In *The Role of Government in Monitoring and Regulating Religion in Public Life*, edited by James E. Wood, Jr. and Derek Davis, 1–20. Waco: Baylor University Press, 1993.

Young, Kimball. *Isn't One Wife Enough? The Story of Mormon Polygamy*. New York: Henry Holt and Company, 1954.

Youn, Monica. "The Chilling Effect and the Problem of Private Action." *Vanderbilt Law Review* 66, no. 5 (2013): 1473–1539.

Zick, Timothy. *Speech Out of Doors: Preserving First Amendment Liberties in Public Places*. New York: Cambridge University Press, 2009.